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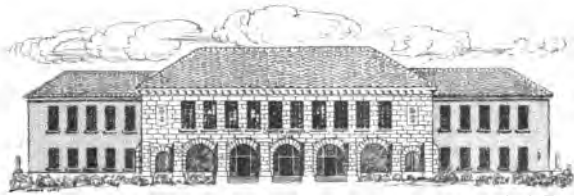
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HOW AMERICANS ARE GOVERNED

CRITTENDEN MARRIOTT



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HOW AMERICANS ARE GOVERNED

IN NATION, STATE, AND CITY

BY
CRITTENDEN MARRIOTT
AUTHOR OF
"UNCLE SAM'S BUSINESS"

WITH AN INTRODUCTION
BY DR. JAMES SULLIVAN
PRINCIPAL OF THE BOYS'
HIGH SCHOOL, BROOKLYN

NEW AND REVISED EDITION



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AUTHOR'S NOTE

THE author desires to express his hearty acknowledgments and thanks to Dr. James Sullivan, Principal of the Boys' High School, Brooklyn, New York, for counsel in the preparation of this book, and for his most valuable contribution in drafting the topical questions which follow the chapters. These pedagogical aids, which adapt the book to class-room use, should also increase its usefulness for the general reader.

PUBLISHERS' NOTE

IN view of the rapid march of events in various lines during the past year, it has seemed desirable to prepare a new edition of this book, which includes the results of a thorough revision by Mr. William W. Rogers of the Boys' High School, Brooklyn.

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INTRODUCTION

THE immediate purpose of all education is to teach the young how to make a living in the state of society in which they are born. It is for this purpose that the savage, who gets his living by hunting and fishing, immediately begins to teach his offspring how to shoot and fish. In the same way the primitive agriculturist gives instruction to his youth in the use of the crude implements for tilling the soil.

Next after the study of those things which train for getting a living comes the study of the government under which the citizen has to make his living, for whether he is to be able to make that living easily or with great difficulty depends upon the government. If the state is weak and corrupt, so that he cannot make his living in quiet, his living is going to be increasingly hard to make. If the state is strong and pure, the making of a livelihood by virtue of the reign of peace and security is going to be so much the easier. It is for this reason that next after the study of those things which enable a pupil to make his living comes the study of the government which by its very existence makes possible the security under which a man may get his living without being molested or robbed.

This volume tells the story of the plan and methods of American government, national, state, and city, in logical sequence, and with the same interest of style that marked the author's successful book, *Uncle Sam's Business*. The purpose is to picture government in its actual workings

INTRODUCTION

instead of devoting much space to historical origins and evolution. The first book explains briefly the sources and growth of government in general, and the English inheritance and development of our own. The second book explains the powers of our national government over money matters, including taxation and coinage, over commerce, including regulation, the tariff, railway rates, trusts and monopolies, post-offices and post-roads, and bankruptcy. The modern spirit of the book is shown in the frank exposition of the problems of the Inter-State Commerce Commission, the question of rebates and the relations of trusts to the public. Other portions of this division set forth legislative powers as regard war, public lands, persons, and patents and copyrights.

After these definitions of legislative powers, the authority exercised by the Executive and Judiciary is made clear, together with the restrictions imposed upon the National Government.

The third book, which is also devoted to the National Government, explains the organization of the legislative, executive, and judicial branches, and their methods of work.

The fourth book explains State Governments, their powers, which are fully defined, and their organization. More space is devoted to this subject than is ordinarily the case in books of this sort. Because of the difficulty of generalizing about the states, the whole question of our State Government has been in most books so subordinated to the National Government that pupils have left the study of civics with a notion that for the purposes of their ordinary life the national and not the state government is the all-important thing. Of course, the very reverse of this is true, and we cannot measure how much of the tendency of the ordinary citizen to neglect state and city issues and elections is due to this wrong position of our texts. That our people, however, take more interest in national affairs than they do in state is proven by the larger poll of votes

INTRODUCTION

whenever a national election is on. Yet from the point of view of his daily life the citizen should take a much more active interest in the state and city elections than in the national.

The fifth and last book is occupied wholly with City Government. The city has its powers only by virtue of grant from the state, and so whatever activities the city carries on may be considered as initiated by the state. How closely they touch the citizen we clearly realize when we look over the chapters in this volume describing matters to which the city pays attention.

The increasing importance of municipal problems and their immediate interest has made it proper that more attention should be given to this subject than is usually done. The origin of municipal powers, and the exercise of these powers over public health, building, streets, water-supply, schools, charities, and various public utilities, and their relation to public service corporations are told in an interesting and informing way. In the second part of this book the organization of City Government is explained, its various forms, the courts, police, and elections, and there is also a chapter devoted to the use of civic opportunities for selfish purposes which is commonly termed "graft."

Briefly, the book is thoroughly modern, dealing with new phases of civics like our relations to the Philippines, the recent aspects of the tariff, control of public utilities, public service commissions, conservation of natural resources, and in this respect as well as in interest of style, it will be found a radical improvement upon most books on government and politics intended for young Americans.

JAMES SULLIVAN.

BROOKLYN, N. Y., *January*, 1910.

BOOK I
ORIGIN OF GOVERNMENT

HOW AMERICANS ARE GOVERNED

CHAPTER I

GOVERNMENT IN GENERAL

Nature of Government.—The word government is commonly applied both to the body of rules by which the affairs of state are conducted and to the body of men who are carrying these rules into effect. Its object is to secure certain benefits to those who live under it. For the most part it does this, not by directly granting these benefits to anybody, but by forbidding other people to interfere with them. Its rules are all prohibitive and not permissive. It does not create rights; it limits them.

A man's right to his farm or his watch or his money does not depend on government. Government *defines* ownership and declares what the *proofs* of it shall be, and, this proof once made, restrains other people from interfering with it, but it does not create the ownership itself. A man's property would still be his own if all government were blotted out, though in that case he would have to restrain would-be trespassers by his own strength instead of relying on the restraint exercised by the government in his behalf.

Society.—Most people, without knowing it, confuse society and government. Society has always existed; it

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is the natural state of mankind; government is a growth made necessary by the increasing complexity of society. Society can exist, and does exist to-day, under special circumstances, without government, but government cannot exist at all without a previously existing society.

A theory of society, popular for a long time, was that ages ago men entered into a sort of implied compact by which they tacitly agreed to surrender some of their "natural" rights in order to get benefits that they could get only by associating with their fellow-men.

Of course, no such compact was ever made, either formally or informally, for the simple reason that there never was anybody to make it. Men have always lived with other men. They were always born into at least a family, and they almost always grew up in association with their parents and their brothers and sisters. Their "natural" rights—whatever the expression may mean—were always modified by contact with the rights of others.

Nevertheless, the "compact" theory has a good deal of truth in it. Men did not surrender their rights and *form* a tribe in order to get the benefits of companionship, but they controlled their impulses and *remained* in a tribe, though in primitive times they could easily have walked or run away from it, rather than *lose* the benefits of the companionship they already had. By remaining they tacitly agreed to surrender their desires—not rights, but desires—when these conflicted too roughly with the desires of other people.

Even to-day there are certain small tribes that live under primitive conditions such as these—tribes that have no government at all, and get along under a live-and-let-live basis that relies on each man's playing fair of his own accord. Many tribes of Esquimaux, for instance, have no ruler, no leader, no council, nothing that even remotely approaches a government. Yet they have many rights (property rights, for instance) that other people have been able to

GOVERNMENT IN GENERAL

enjoy only by means of all sorts of legal machinery. Custom decrees the extent of these rights, and the Esquimaux observe them, although they have no government to compel the observance.

Primitive Government.—Tribes without government, however, are, and must always have been, very small and subject to peculiar conditions. For most men some sort of government became necessary at a very early date. It was necessary for three main reasons: One was to protect the members of the tribe against one another (to enforce the customs and see that the stronger members did not impose too greatly on the weaker ones); the second was to compel concerted effort for the common benefit (to see that everybody did his share of the necessary work); and the third (really the first in point of importance) was to provide for the common defence (restrain the enemies of the tribe).

This is the justification of government, but it is not asserted that government came about through any actual understanding that it should do these things. Quite the contrary. Historically, government is an expansion of the family.

Probably every primitive tribe started as a family. The strongest, bravest, and cleverest man naturally got the best wife (and perhaps the most wives), reared the most and the strongest children, and protected and provided for them in the best way. When they were grown they could go away if they wanted to; and no doubt many of them did go away.

But primitive man had to be a pretty strong fellow to face the dangers of the primitive world alone. He was always menaced by wild beasts, by starvation (ever close to savages), and by the dread of loneliness and of the dark. All these were very real perils in early days; and most men must have preferred to stay with their fathers, even if they had to continue to bow to their authority in order to do so. The first chiefs were undoubtedly literally the

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fathers of their tribes, and their authority rested on their paternity and on their greater experience and knowledge. When they died the strongest and cleverest sooner or later took their places and their authority.

Such rule could not have been, as some people have assumed, altogether the rule of "might." Seldom, indeed, could the chief have been so very strong as to be able to overawe the whole tribe, and not only keep them subject to him but also keep them from running away. For ages the chief must have gained and exercised his authority largely, if not wholly, by the consent of the tribe. The strongest and cleverest man was allowed to rule, not because he could kill any member who disputed his power with him, but because he was supposed to be the man who was best fitted to protect and provide for the tribe. Here, again, we have the old idea of a "compact." Men did not choose a chief to protect them, but they *submitted* to a chief already chosen (by himself, perhaps) as long as he seemed best able to protect them. "All that a man hath will he give for his life." When they doubted his ability to protect them, they either killed him (or more likely supported some member who did kill him and took his place), or they ran away.

Obedience is necessary in all things and in all ages, but it is peculiarly necessary when men are fighting for their lives — and primitive man was always liable to have to fight for his life. To be most effective, the chief had to be supreme when fighting was at hand; and from being supreme at one time it was only a step to being supreme at all times.

Hereditary Government.—Chiefs, then, got their posts partly by strength and skill, but they were allowed to retain them because it was to the advantage of the tribe for them to do so. Later, as they grew more firmly seated, they abused their powers, and after a while they handed down their authority to their sons, who were not necessarily nor even usually the best fitted to continue

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the services that their fathers had rendered to the community.

By this time, however, the known world had been pretty well parcelled out, and people could no longer get away from a chief by walking a few miles. All they could do was to submit or to rebel. Nor was rebellion easy, for the chiefs had built up machines too strong to be readily overthrown except by concerted action, and for concerted action a leader was necessary. When such concerted action succeeded, the leader would usually make himself king, and in course of time he or his descendants would probably become as obnoxious as the man he had overthrown. Every effort to loosen the chains of the people seemed to bind them closer.

For centuries this sort of thing went on. Rebellion followed rebellion; kings came and went, but the kingly system persisted—persisted because, all things considered, the “one-man” power was best fitted to the needs of the day—and the one man always strove to strengthen his position and hand down his throne to his sons. The day when the people could choose this one man and control him was yet to come.

The dawn of history saw the kingly system firmly established; history itself, rightly read, is one long record of the efforts of the people to gain control of it, or to overthrow it and establish democratic governments in its place. More than five hundred years before Christ they overthrew it in Greece, and established small commonwealths there; they did the same thing in Rome a little later, and repeated the process at various later times in various places. But until quite recent times their success lasted for a time only; sooner or later the kings regained control.

Limited Monarchies.—Although for centuries the people found it impossible to *dispense* with kings, they long ago began to control them. The absolute rulers of early times were little by little stripped of their powers, sometimes by force of arms, sometimes by refusal of money

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except on conditions. Kipling sums up the case in the following lines:

"All ye have of freedom, all ye think or know,
This your fathers bought ye, long and long ago.

.
Wrenched it from the king!"

As time went on the absolute rule of the chiefs was tempered, first by the establishment of a council of nobles, and, later—a long time later—by the establishment of a parliament of the people. The absolute monarchy became a constitutional monarchy. Finally, in some cases, even this was swept away and republics arose.

Republics.—The fundamental difference between a republic and a monarchy is that in a republic the people choose the one man who is to lead them, give him what powers they see fit, and limit the tenure of his office; while in a monarchy the one man comes to his throne by right,¹ retains it for life, and grants to the people what powers he may be compelled to grant. The head of a republic may be, and often is, clothed with greater powers than the head of a monarchy, but he exercises them all temporarily, and they are revocable by forms of law without his assent, while the powers of a king are continuous and cannot be revoked against his will—except by revolution or the threat of it. The president of a republic has only the powers that have been granted him *by* the people, and has them only for a limited time; a king has all the powers there are except those that he or his predecessors may have granted *to* the people. In the republic the people are the source of power; in the kingdom the king is the source.

¹ Kings are sometimes selected by the people after a successful rebellion, but, once selected, their right to rule usually becomes unquestionable and cannot be revoked except by force; nor can their powers be lessened except by their own consent.

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The present forms of all monarchies is a result of growth, the result of the efforts of the king to retain his authority on the one hand, and of the demands of the people that he modify it on the other. They are compromises, and differ in each case according to the wishes and strength and luck of the people and of the king. The government of a republic, on the other hand results from an utter destruction of the kingly authority and the resumption by the people of the powers that were filched from them by the first king or that they had yielded to him.

Having resumed their rights, the people have to establish some form of government to take the place of the one they had discarded.

If the new government is to last, it must be (1) as strong and capable as the kingly government to protect the people both against internal and external enemies (to enforce justice and provide for the common defence), and (2) must be so tied down and restricted that it shall always remain the servant of the people and shall never be able to make itself their master. Experience seems to have proved that the first of these can be attained only by having a temporary one-man executive, and the second only by having also a popular independent legislature. Efforts to get along without both of these have always failed.

Government by an executive alone would, of course, be simply the old kingly system under a new name. Government by a legislature alone has always been short-lived and ineffective. France had such a government several times for brief periods, the United States had it for a few years previous to the adoption of the Constitution, and minor states have tried it. Always it perished unregretted. The advantages of having a single head to a state seem to be as important to-day as they were in the dawn of history, and will continue to be such until the dawn of the millennium, for the simple reason that a single head can always be held responsible for his acts,

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while each member of a composite head can always pass the blame along to the other fellows.

All modern republics have both an executive head and a legislature, each with its own powers and duties, and each independent of the other. Commonly, they have also a judiciary, wholly or partly independent, which is charged with seeing that neither the executive nor the legislative branches exceed the rights granted to them by the people—neither usurp each other's powers nor encroach on the rights of the people.

TOPICS

If government does not create rights, on what do they depend?

Explain clearly the distinction between society and government.

Why is government called the agent of society?

What was the meaning of democratic government five hundred years before Christ? What do we mean by it now?

Could tribes that had an easier struggle for existence get along without laws or government as well as the Esquimaux do? Give your reasons.

What was the earliest form of government? What is now considered the best form, and how has it developed?

Why would a government with a President, but without a legislature or judiciary, develop into a tyranny?

CHAPTER II

ORIGIN OF THE UNITED STATES GOVERNMENT

Ancestry.—The United States National Government is the direct descendant of the English government. Its system of separate state governments, which arose naturally from the circumstances under which it grew up, was original; but the broad lines on which the *national* government and each of the state governments is built were copied, with necessary modifications, from forms that had been followed in England for eight centuries.

Actually the plan goes even further back. Our Germanic ancestors who invaded England in the fifth century took with them the self-governing township system that their descendants brought to the United States centuries later. The townships they founded flourished for years, and were not wholly destroyed even when they fell under the domination of nobles or "lords" and became known as "manors." Even then the townships continued to hold "courts" or meetings, and to choose representatives to the "county" courts. Later, when the country fell under the dominion of petty kings, these county courts became their councils and acted as a check on their power. Still later, when these little kingdoms were reduced to "shires" and united into one big kingdom, representatives of all the shires acted as advisers to the king.

The kings of England never ruled alone. Always they had this body of advisers. First it was known as "The Wise," then as the "Council," and last as "Parliament." For six hundred years this parliament has consisted of two

HOW AMERICANS ARE GOVERNED

houses, Lords and Commons; and for the whole six hundred the Commons have been chosen as "representatives" of the people. It is only recently, of course, that they have been chosen by "popular" vote or by "universal" suffrage, but from the first they have actually *represented* the different parts of the country and have in some sense been chosen by the people.

With such a history as this the system could not fail to be bred in the bone of all Englishmen; and when these came to set up new governments beyond the sea it was the most natural thing in the world for them to follow it, retaining the two houses of parliament and merely substituting a governor or a president for a king. It would have been amazing if they had done anything else.

The Revolutionary Government.—In a book of this character it is not necessary to review the events that led up to the Revolution. Suffice it to say that on September 5, 1774, the British colonies in America met by delegates at Philadelphia, made a joint protest against the actions of the British government, and recommended that a second "congress" should meet a few months later (May 10, 1775). Before this second congress could meet, however, several of the colonies were in open rebellion and war had been begun by Great Britain—not war against the United States, for the United States did not then exist—but war against the separate colonies.

When the second congress met, the delegates to it, acting under instructions of their colonies, provided for raising an army for the common defence. They also provided a currency by authorizing the issue of bills of credit (promises to pay), established a treasury department and a post-office, and formally advised the separate colonies to organize governments of such forms as would best secure order during the continuance of hostilities. In other words, this congress exercised certain governmental powers.

More than a year later, on July 4, 1776, the delegates adopted the Declaration of Independence, declaring that

THE UNITED STATES GOVERNMENT

the colonies were independent. This was at once the birth of the nation and of the states; it created the nation and it transformed the colonies into states.

But it was a nation without a regularly established government. Congress *acted* as the government, but its authority was self-assumed and not granted to it by the people. It proceeded to carry on war, borrow money, make treaties, and so on, for five years, until March, 1781, when it gave place to the government established by the Articles of Confederation.

The Government of the Confederation.—All this time, from July 4, 1776, although the *congress* had very limited, though indefinite, powers, the *nation* had all the powers that any sovereign nation possessed. The ratification of the Articles of Confederation did not increase nor decrease these powers; it merely formally distributed them, assigning part of them to the national congress and part of them to the states.

Experience soon showed that this first formal distribution did not give enough power to the nation and did reserve too much to the states. Under it the national government (which was solely the congress) was given power to make war and peace, conclude treaties and alliances, coin money, conduct the post-office, and decide disputes between the states. But it had no power to impose customs duties or other taxes, to enforce the observance of treaties after it had made them, to buy bullion for coinage, to raise armies or build navies, or to aid a state to suppress a rebellion. It could, in fact, do little more than recommend action to the separate states, and it could not even do this for the most part except by the votes of nine states—two-thirds of the whole number. Finally, it had no executive—what it could do it had to do by its own employees; and no judiciary, this being reserved to the states.

So weak, ineffective, and, indeed, ridiculous, was the national government under the Confederation that after

HOW AMERICANS ARE GOVERNED

only six years' experience the people decided to discard it, and called another convention to make a fresh distribution of powers.

The Government of the Constitution.—This convention formed the Constitution of the United States, by which the powers of the central government were greatly enlarged, and those of the states correspondingly diminished. The *total* powers as *regards foreign nations* were unchanged; they were merely redistributed. The total powers, however, as regards the people themselves, were both redistributed and reduced; although the people gave greater powers to the national government, they also imposed both on the national and state governments certain positive restrictions (see pages 129-133, 244-248) that can only be repealed or modified by the people themselves. For instance, they forbade both states and nation to pass any law making criminal any act that was not criminal when it was committed, or to grant any title of nobility, or to abolish trial by jury.

Changes in the Government of the Constitution.—Any constitution devised by man is subject to two dangers: It may be violated, either in the letter or in the spirit, so as to bring about ends very different from those for which it was devised; and it may become antiquated or ill adapted to the changed needs of the people and may therefore need amendment.

Violations of the letter usually arise from the personal element that must always exist in all governments.

A government is not a machine that will run on automatically once it is started. It must be administered by men, and experience has shown that when men are granted power they are very likely to try to enlarge or prolong it. Every people, therefore, in creating their government, have sought to devise methods by which they could retain sufficient control of it to prevent it from assuming greater powers than they had seen fit to grant it.

In the United States they sought to attain this end by

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creating a Supreme Court, whose duty it was made to consider the actions of both the President and Congress, and to declare their actions unlawful if they did anything forbidden or not warranted by the Constitution. The plan has so far stood the test of time. The Supreme Court has little physical might, but its mere dictum has again and again overborne the will of both the Congress and the President. The letter of the Constitution has never been violated.

Violations of the spirit are usually brought about by a change in the ideas of the people. The government of the United States has been very tremendously altered in spirit at least three times without any corresponding change in form. The first change took place when Jefferson bought Louisiana and changed our destiny from that of an insignificant coastwise country to one of continental dimensions. The second took place during the Civil War, when we utterly changed our ideas as to the relations of the states to the general government; the most ardent states-rights man of to-day never dreams of going as far as all but a very few people went as a matter of course fifty years ago. The third change came at the close of the Spanish War, when we acquiesced in the acquisition of lands beyond the sea and the governing of their peoples as subjects. It is not intended to criticise these changes, but merely to point out that they are real violations of the spirit of the government the founders of the republic tried to establish.

Formal alterations in the organic law often become necessary through a nation's outgrowing the form of government with which it was started. All institutions all over the world are a product of development, and all have been repeatedly changed and will doubtless be further changed as time goes by. It is important, therefore, for a constitution to supply means for its own alteration—not too easy means, for it should not be lightly changed, but still means that will be available if the need be sore

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enough. Such means are provided by the United States Constitution.

Article V of the Constitution provided that it might be amended in either one of two ways: (1) Congress by a two-thirds vote of both Houses might draft amendments which should become valid when ratified by conventions or legislatures in three-fourths of the states; (2) on request of the legislatures of two-thirds of the states Congress was required to call a constitutional convention at which amendments might be proposed, these amendments to become valid, as in the former case, when ratified by legislatures or conventions in three-fourths of the states.

Twenty amendments to the Constitution have been proposed; of these fifteen have been adopted, four have failed of adoption, and one is still in progress of adoption. All were proposed by Congress; two-thirds of the states have never yet requested a convention.¹ All of those adopted have been ratified by legislatures and not by conventions.

TOPICS

In your histories, trace the events leading up to the first Congress of September 5, 1774.

What did the Congress do which began its sessions May 10, 1775?

Read the Declaration of Independence, and summarize the grievances against the English government contained in it.

Put in outline form the government under the Articles of Confederation.

What weakness of the government under the Confederation did the Constitution remedy?

¹Two-thirds of the states recently requested Congress to submit to the several states an amendment providing for the election of United States senators by the people instead of by the legislatures. Such a request, however, has no legal force; the states have no authority to compel the submission of a particular amendment; they can only compel the calling of a convention to propose amendments.

CHAPTER III

NATIONAL, STATE, AND CITY GOVERNMENTS

One and Many.—No other nation, ancient or modern, has ever divided the powers of government on the lines adopted in the United States. All other nations have either been “centralized”—having a central government in which all power resided—or have been loose federations. France is a republic, and Great Britain is a very limited monarchy, but both are centralized; in them all power resides in the general government, which *grants* to cities, departments, counties, etc., a measure of local self-government—government that the central government can at any time revoke. On the other hand, the early Greek league of republics and the early confederation between the thirteen American states were extremely loose federations.

The United States, however, is neither a league nor a consolidated republic. A league has not a strong national government like ours, and a consolidated republic has no states such as ours. The American people are at once a single nation and a union of independent states. The national Constitution and the state constitutions are really parts of one constitution, part of which relates to the nation and part to the separate states. Such a form of government is an anomaly in the history of the world.

The Nation and the States.—A constitution provides for the organization of the government and lays down certain general principles which are to control its workings. It does not attempt to prescribe minute details of regulation, for these will naturally have to be changed

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from time to time to suit the changing needs of the country. Such details are left to ordinary laws, which are made, altered, and repealed by methods prescribed in the Constitution.

The Constitution of the United States gives the national government power to make laws in regard to most things that are national in their nature. Thus the national government may levy customs duties, coin money, conduct a post-office, declare war, regulate interstate and foreign commerce, punish infractions of its own laws, and so on.

The state governments have power over most matters that the people have not granted *exclusively* to the national government and have not reserved to themselves. Thus they are the authors of the vast body of criminal and the civil law. They punish most crimes, and they control marriage, prohibition, inheritance, incorporation, contracts, and hundreds of other subjects. They levy direct taxes and spend the proceeds.

While the Constitution was as explicit as it could be in its apportionment of powers to state and nation, it obviously could not foresee and provide, except in general terms, for everything that might come up in the future. Hence there has always existed, and always will exist, a "borderland" between the national and the state governments wherein the right to act has not been defined. The tendency nowadays is always to give the national government the benefit of any doubt. It has even been contended that, if the states neglect to act in a matter where the right of action is doubtful, such neglect really concedes the authority to the national government. Neglect on the part of Congress, on the other hand, is held *not* to concede any rights to the states. These may act as long as Congress does not, but if Congress finally decides to act its action overrides any conflicting state laws.

All cases rising out of disputes as to the relative powers of the national and state governments are proper subjects

NATIONAL, STATE, AND CITY

of judicial determination, and can, by proper methods, be brought before the Supreme Court for determination (see page 125).

The Cities.—The national government and the state governments together constitute the whole government of the United States. It might be supposed, therefore, that the government could readily be discussed in two parts devoted to these two grand divisions.

Such, indeed, would unquestionably have been the case a hundred years ago; and such a scheme would have been, if not advisable, at least not improper, even twenty years ago. But to-day it is no longer so. City governments now demand equal consideration with national and state governments.

The most striking fact in modern history, both in the United States and abroad, is the rise of the city. From 1800 to 1900 the population of cities in the United States increased one-hundred-and-eighteenfold, while that of the rural districts increased only tenfold, and the change in relative wealth was even more striking. New York City to-day has as great a population and twenty times as great wealth as the whole United States had at the time of the Revolution.

Even these facts do not bring out the full importance of the city. There is scarcely a man, woman, or child in the land who does not directly or indirectly come in touch with cities and their laws. A mere market regulation in New York may affect the wages of a laborer on a truck-farm in Florida, on a fruit orchard in California, or on a dairy farm as much as five hundred miles away from the great city. We all sell to them, buy from them, and visit them from time to time.

Finally, no less than five states have already given powers as great as their own to certain cities within their boundaries (see pages 288-289).

In view of this great and growing importance, it seems absurd longer to adhere to the old plan of dismissing city

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governments with a paragraph or a chapter in a book devoted to the government of the United States.

In the following pages, therefore, the United States government will be discussed under three heads: the national government, the state governments, and city governments. Naturally there are a good many topics that might justly be discussed under two or even all three of these heads. Railroads, for instance, are matters for both the nation and the state, schools for both the state and the city, and taxes for all three. Some subjects differ so greatly in their relations to nation, state, and city that it seems best to consider them in two or more places. Others, however, cannot well be divided, and these are considered in the division where on the whole they seem most important, and are merely referred to elsewhere.

TOPICS

Can you show differences, other than size, between the nation, state, and city that make different forms of government necessary?

Is a city part of a state in just the same way that a state is part of the nation?

Does the city get its powers from the state or the nation?

BOOK II
THE NATIONAL GOVERNMENT



- PART I—GENERAL POWERS**
PART II—LEGISLATIVE POWER OVER MONEY
PART III—LEGISLATIVE POWER OVER COMMERCE
PART IV—LEGISLATIVE POWER OVER WAR
PART V—LEGISLATIVE POWER OVER LANDS
PART VI—LEGISLATIVE POWER OVER PERSONS
PART VII—LEGISLATIVE POWER OF MONOPOLY
PART VIII—EXECUTIVE POWERS
PART IX—JUDICIAL POWERS
PART X—LIMITS OF POWERS

PART I.—GENERAL POWERS

CHAPTER IV

EXTENT AND DISTRIBUTION

Express and Implied Powers.—The Constitution names certain powers which it says shall belong to the national government, and it names certain rights of the people with which it says the government shall not meddle. It also says that Congress may make all laws that are necessary and proper for the execution of the powers granted to it. Many attempts have been made to limit the exercise by Congress of this “necessary and proper” clause.

Yet it is hard to see how Congress could have carried out certain expressed powers without the exercise of implied powers. It might be very hard to “raise armies” without resorting to the implied power to pass Draft Acts. Some, however, fearing too liberal or “loose” a construction of the Constitution, have fought bitterly for a “strict” construction which would limit very narrowly the interpretation of the clause and the power of the central government.

That the First Congress favored loose construction was demonstrated in 1789. The Congress was considering the phrasing of certain proposed amendments. Twice it was argued that in the proposition which became the Tenth Amendment the national government should be limited to powers “expressly” delegated. The insertion of the word “expressly” was voted down on the ground that it was

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impossible to enumerate all the powers to be granted to the government. Further, the Constitution itself in several places recognizes that the government may exercise powers not expressly granted. For instance, it forbids the government to do a large number of things, though such prohibition would be entirely unnecessary if Congress was already unable to do them through lack of expressly given powers.

Nevertheless, the Constitution stands. The national government has no powers not granted or necessarily implied. But "implied" is a very broad word; it has undoubtedly been used to give the government powers scarcely dreamed of in early days, and there is no telling where it will stop.

The Supreme Court has repeatedly held that the national government is vested with sovereign powers and that it is entitled to exercise all powers incidental to sovereignty. If a particular action is such that it cannot be done by the states, then the courts have consistently held that the power to do it must reside by implication in the national government, *unless the Constitution expressly forbids*. The Constitution, for example, gives no express authority that could justify the purchase of Louisiana, the annexation of Texas, the acquisition of the Philippines, or, to come down to internal affairs, that could warrant the giving away of public lands to railroads, agricultural colleges, etc. These things were all done under the "implied" authority of the government as acts of general sovereignty.

Efforts to prevent such action by appeal to the Supreme Court have always failed, the court holding in effect that the national government is the judge of its own national affairs, that the acts complained of were *political* (matters of policy) and not subject to judicial review.

Division of Powers. — The constitutional convention, besides changing the distribution of powers between the nation and the states, adopted a plan for the *national*

EXTENT AND DISTRIBUTION

government and divided up the *national* share of the total powers among the several branches of that government. This division, again, was absolute; neither the whole government nor any branch of it can alter it; only the people who made it can do this. Means were provided by which they could find out if they ever wanted to do it.

The change in the form of the general government was radical.

The Articles of Confederation provided only for a congress, in which were lodged all the powers granted to the general government. Congress made the laws; it directed their execution; and it organized and controlled the very limited judicial machinery of the government. The nation had no president; the chairman of the congress simply presided; he had practically no more power than any other member.

The Constitution of the United States, on the other hand, created three separate and distinct branches, each supreme in its own sphere. It created a legislature or congress to make the laws, an executive or president to execute the laws, and a judiciary to interpret and enforce the laws.

The powers granted by the Constitution (or implied from it) are divided among these three branches of the government: some to the legislative, some to the executive, and some to the judiciary. Obviously the legislative or law-making powers come first, as until they are exercised—until laws are made—the executive has nothing to execute and the judiciary nothing to interpret.

When the Constitution says that Congress shall have power to do such and such things, it means that it shall have power to make laws in regard to those things, not that it shall have power to do them personally or even directly to employ men to do them. When it says that Congress shall have power to provide money, it does not mean that it may buy bullion and employ men and directly order them to run a mint; it merely means that it shall

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have power to make a law under which, by means of employees, the executive shall coin money. Things were different under the Articles of Confederation, which provided no executive. Under these Congress *did* directly do a number of things. For instance, it did issue by its own employees "bills of credit," which passed for money in those days.

The powers of Congress, therefore, will be considered first, and afterward those of the President and the courts.

TOPICS

What is the difference between inherent, implied, and delegated powers?

Under what clause of the Constitution may Congress claim the right to acquire territory?

What is likely to be the trouble with concurrent powers?

Is the present tendency toward Congress getting more powers than the states, or *vice versa*?

PART II.—LEGISLATIVE POWER OVER MONEY

CHAPTER V

TAXATION

Grant of Power.—Under the Articles of Confederation the government had no power either to lay or to collect taxes; it was supported by the states, which contributed to it in proportion to the value of their real estate. If a state neglected or refused to pay its share, the national government had no way of compelling it to do so. This was a very humiliating state of affairs, and contributed not a little to the failure of the Confederation.

Warned by this, the makers of the Constitution gave to Congress the right to impose and collect "taxes, duties, imposts, and excises," but limited this power in two ways: providing (1) that "direct taxes" must be apportioned among the states in proportion to their populations (not in proportion to their wealth); (2) that all "duties, imposts, and excises" must be uniform throughout the United States; and (3) that no tax could be imposed on *exports*. A fourth restriction was connected with slavery and has now become obsolete. These restrictions cannot be understood without some definitions.

Definitions.—"Taxes," as the word is used in the Constitution, means "direct" taxes, and direct taxes, as decided by the Supreme Court, are of two kinds only: taxes on real estate (including incomes therefrom) and "poll" taxes. Real-estate taxes are readily understood; poll taxes are taxes per "poll" or head—so much for each person.

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Duties, imposts, and excises differ slightly in meaning, but they all stand on the same footing in the eyes of the Constitution. Commonly "duties" and "imposts" are used in speaking of custom-house taxes, and "excises" are used in regard to internal revenue taxes, but the distinction is of no importance.

Nature.—Duties, imposts, and excises must be uniform throughout the United States. They are levied on goods of one sort or another, either on articles imported from abroad (taxes on exports are forbidden) or on certain articles produced (such as liquors, tobacco, oleomargarine, etc.) or owned (such as carriages, express receipts, checks, etc.). The *rate* levied must be uniform from Maine to California; the total *amount* obtained from them depends on the extent of their importation, use, etc. Thus taxes of this sort are *uniform* and are *indefinite* in the amount they yield.

National direct taxes, on the other hand, under our system, though *definite* in amount, are not uniform. When Congress levies a direct tax, it states the amount it requires (it called for a direct tax of twenty million dollars in 1861) and calls upon each state to pay a share of it proportionate to its population. Under this plan a new and poor state would have to pay as much as an old and rich state *with the same population*. Oregon, South Dakota, and Rhode Island, for instance, would have to pay about the same, irrespective of their wealth. This seems unfair. Another objection to direct taxation prevails in the United States. Owing to our double form of government, we must raise money by taxation both for national and for state purposes. Direct taxes, however, must usually be raised on the very things that must pay taxes to the states, thus robbing the states of part of the resources that would naturally help to support them. This is not a valid objection; it is only one arising from our habits; but it is a very practical one.

For these reasons national direct taxes have always been

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unpopular in the United States, though in other countries (England, for instance) they pay the larger part of the expenses of the government. We have resorted to them only five times, each time for only one year.

Direct Taxes.—"Direct" taxes, as the term has been construed by the Supreme Court, are different from direct taxes as popularly understood and as defined in political economy. To the political economist (and to the average man) a direct tax is a tax collected directly from the property of the man who pays it, and an indirect tax is one that can be passed along to somebody else.

Taxes on carriages, bank checks, etc., are direct taxes in the eyes of the *political economist*, because they are paid by the owners of the carriages, the drawers of the checks, etc., and cannot be shifted; while customs taxes are indirect, because their amount is added by the importer to the price of the goods and is finally paid by the consumer. In the sense of the Constitution, however, as interpreted by the Supreme Court, a tax on carriages or telegraph messages is not a direct tax.

Income taxes are direct in so far as they are derived from real estate, and indirect in so far as they are derived from other sources. Practically it is impossible to divide incomes up according to their sources, and if they could be so divided it would be considered grossly unfair to tax those derived from one source and exempt those derived from another source. For these reasons Congress has found itself unable to impose a satisfactory income tax except by apportioning it among the states in proportion to their populations. An amendment to the Constitution, giving the national government power to impose an income tax, was proposed by Congress to the states in 1909 and is still under consideration. It will become part of the Constitution when three-fourths of the states ratify it. After that, Congress, in its discretion, may or may not impose such a tax.

Customs Duties.—Customs duties have almost always

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been the chief source of United States government revenues. Before the Civil War they were almost the only important source, but since that time they have been nearly equalled by internal revenue receipts.

The power to impose them is naturally a function of a national government. Under the Confederation, however, Congress had no such power, the states reserving it to themselves. This led to endless complications and was wholly given up when the Constitution was drafted. Nowadays no state may impose any customs duties (except by the consent of Congress) further than may be necessary to pay costs of inspection, harborage, etc., on goods imported. If any charge made for inspection brings in more than it cost, the excess must be turned over to the United States. Nor may a state impose such taxes indirectly. Maryland once required importers of foreign goods to take out a license costing fifty dollars, but the Supreme Court declared the law unconstitutional on the ground that it was virtually an import tax.

Once inside the country, it is difficult and often impossible to identify foreign goods; and so, in order to make sure that these shall pay the duties, foreign goods are required to be brought in at certain specified places called "ports of entry," where they are examined and the duties assessed according to law. Evasion of the duty is known as smuggling, and Congress is given power to punish such by imprisonment, fine, and confiscation of the goods.

Export Taxes.—Export taxes are expressly forbidden by the Constitution.

Internal Revenue Taxes.—Internal revenue taxes, as understood in the United States, are all taxes not direct except customs duties. In early days internal revenue taxes were imposed to a limited extent only; the first really important law on the subject was adopted in 1862, in order to raise money for carrying on the Civil War. It brought in about \$300,000,000 a year, and it and its suc-

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cessors have furnished nearly half of the total income of the United States ever since.

Ordinarily internal revenue taxes are levied on liquors and tobacco, but they may be imposed on practically anything except real estate. In time of war they have been levied on carriages, express receipts, telegrams, watches, and hundreds of other articles. Even to-day they are imposed on profits of corporations engaged in interstate commerce, oleomargarine, notes of state banks, adulterated butter, filled cheese, opium, mixed flour, and playing-cards. Where possible they are paid by purchasing special stamps, which are affixed to the goods and thus serve as evidence that the duties have been paid. Selling or having in one's possession any of these articles not bearing the proper stamps is an offence which Congress is empowered by the Constitution to punish by imprisonment, fine, and confiscation of the goods.

Objects of Taxation.—Taxes are ordinarily imposed in order to raise money. The Constitution, however, does not restrict them to this; it says Congress may impose them to pay the debts and provide for the common defence and the general welfare. It does not say that Congress may impose them *to raise money* to provide for these things, but that Congress may impose them to do these things. This distinction is a fine one, but it is important, for on it depends the entire right of Congress to impose a “protective” tariff.

On each article imported or manufactured or used in the United States there is necessarily some particular rate which, if imposed, would yield the greatest possible receipts. Increase the rate above this figure and imports (or production or use) would fall off, so that even at the higher rate the total income would be less; reduce it below this figure and, though imports (production, use) will increase, they will not balance the loss from the lower rate.

A *revenue* tariff aims to ascertain this most profitable rate and to impose it. A *protective* tariff, on the other

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hand, tries not to impose the most profitable rate, but to find the rate which, while profitable, will at the same time restrict the importation of articles that come into competition with domestic products. Theoretically it is supposed to be high enough to equalize the cost of production at home and abroad, and at the same time yield sufficient revenue for the expenses of the government.

To equalize the cost of production and thereby prevent cheap foreign goods from underselling and ruining domestic industries is certainly to provide for the "general welfare" of the country, and on this ground the courts have declared that the imposition of an admittedly protective tariff is lawful. It is contended by many, however, that such duties, even if legal, really go beyond the intention of the framers of the Constitution. It is a fact, nevertheless, that as early as 1789, only one year after the Constitution was enacted, Congress passed a tariff act which it expressly stated was for the "encouragement and protection of manufacturers," thus showing that the "fathers" of the country considered such action within their powers. A protective tariff is therefore legally justifiable; whether it is advisable is another question (see pages 64-70).

Some internal revenue laws are also based on this "general welfare" provision. The taxes on notes of state banks, oleomargarine, opium, etc., are not imposed to get revenue, but to restrict or prevent the production of things that are considered objectionable. In early years state bank-notes so often proved worthless that in 1866 a federal law was put into operation which demanded that they should be taxed out of existence altogether; later, oleomargarine, mixed flour, etc., were taxed so that they might be readily identified by the "stamps" affixed to them and thus might not be fraudulently sold to the public as butter, wheat flour, and so on. Similarly opium was taxed in order to control its importation and use, and to

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lessen the danger that would come to the country by the development of an opium-smoking "habit."

TOPICS

Do any countries tax exports?

Where is your nearest port of entry?

What articles have you seen with revenue stamps on them?

What is the difference between direct taxes as defined by the Supreme Court and as the term is generally used?

Does the burden of taxation fall more heavily upon the rich or upon the poor?

Why are tobacco and liquors so generally taxed?

What is the tax rate in your town?

CHAPTER VI

LOANS

Need for Loans.— Under ordinary circumstances neither a man nor a government should borrow money for *running* expenses; a man should not do it, because he is likely to find it more difficult to pay it back than he expected; and a government should not do it, because it is unfair to saddle posterity with a debt for which it has received nothing. Both man and government should live within their income.

But there are times when both men and governments must borrow; such times may come about through sudden crises (illness for the man or war for the government, for instance), or through the chance to make some investment which will probably be highly profitable in the future but the expense of which is beyond one's ordinary means. Cities, for instance, must invest heavily in waterworks, streets, parks, etc., all of which will return big dividends in comfort, health, prosperity, etc. In war time, also, enormous sums of money are needed to enable the government to defend the country. To raise the necessary funds directly and immediately would be to put a crushing burden on the people. But by borrowing the money and paying it back at so much a year the burden becomes comparatively easy to bear.

A debt incurred by a government must be paid from taxes imposed, at least partly, on later generations. If the money borrowed was spent in improving the city or in saving the government (in war), it is entirely fair that

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later generations should help to pay it, for they will benefit by its expenditure. But it is not fair to saddle posterity with a debt for something that does it no good. Therefore, when it is proposed that a government (city, state, or nation) shall borrow money for a particular purpose the question should always be, "Will the people who have to pay this get a reasonable benefit in return for their money?" If they will not, the project should either be abandoned or else paid for out of current taxes.

Bonds.—The usual way for a man to borrow money is by giving his note with valuable property as security for its payment. Governments do the same thing, except that their notes are called "bonds," and that instead of property they usually pledge their "faith and credit" for repayment. Their bonds bear interest just as a man's notes do.

Further, instead of going, as an individual would do, to some particular money-lender and asking him to lend them money, governments usually offer their bonds for sale publicly. If a government's "credit" is good—that is, if its prospects of being able to pay back the debt are good—the bonds will sell at or above "par"; that is to say, at or above their face value. If a government's credit is bad, however, it may have to sell below par—for a less sum than it pledges itself to pay back.

Generally speaking, payment of a government's debts rests entirely on its honesty and ability to repay. There is no international sheriff or court to levy on its property, although sometimes a powerful government will, by means of its armies or war-ships, compel a weak one to pay debts that it has sought to evade.

The United States has borrowed immense sums by selling bonds of various forms and for various purposes. Its greatest borrowings were during the Civil War, but it has often borrowed lesser sums for various purposes, its latest debt being incurred to get money to pay the cost of the Panama Canal. It has been paying off its debt, however,

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and has now reduced it to much less than half what it once was.

The states and the cities of the United States have borrowed large sums, aggregating hundreds of millions, mostly for internal improvements.

Forced Loans.—Issuing bonds, however, is not the only means by which a government can borrow money. It has another way—one not open to ordinary men. It can print “paper money” and—for a time—force people to accept it at its face value in payment of government debts. So insidious is this method of borrowing that many people do not realize that it is borrowing at all, and actually think it is a mode of creating wealth. At one time there was even a powerful political party in the United States that advocated making everybody rich by printing untold millions of “greenbacks.”

Paper money is of two kinds. One kind is a *substitute* for real money, the other kind is a *promise to pay* real money; that is to say, it is a note—an evidence of debt.

Substitutes for real money have nothing to do with borrowing; they will be discussed under “Coinage” (see page 43) and under “Prices” (pages 53-54). Far different is the other class of paper “money,” which consists of treasury notes (greenbacks) and national bank-notes.

Treasury notes are government promises to pay money (nowadays they are promises to pay “on demand,” but originally they were not so). As originally issued by the government, this is *all* they were. Nobody was compelled to take them, and except for the greater faith and confidence in payment that went with them they did not differ essentially from private notes.

During the Civil War, however, something was added to them. They were made partial “legal tender”; that is to say, if the government owed money, or if a private person owed money, they could pay the debt (except im-

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port duties and interest on national bonds) with these notes; to offer them was declared by law to be a "legal" or lawful "tender" in payment of the debt—that is, the government decreed that people must accept its printed promises to pay—its notes—instead of the actual cash. This, of course, amounted to *borrowing* the amount of the notes from the people. Such notes constitute what is known as a "forced loan."

Such notes, called "bills of credit" in early days, were issued by the Confederation. By the original draft of the Constitution, Congress was authorized to issue them, but the permission was stricken out before the Constitution was adopted, leaving the matter without *express* determination. Congress, however, quickly assumed the power to issue them.

So long as they were not made legal tender, no one objected, but when Congress decided to force them on the people great opposition was aroused, and the matter was carried to the Supreme Court. The court, however, probably influenced by the dire necessity of the government, decided that Congress was within its rights. The Constitution, it may be observed, forbids the *states* to make anything but gold and silver legal tender, but applies no such prohibition to the national government.

The effect was curious. People *had* to take the notes; the law compelled them to do so. But they distrusted them; they were not quite certain that the government would ever be able to pay them. So, to be on the safe side, every one began to put up his prices—everything became very expensive. Simultaneously *gold* disappeared. People were certain that gold would retain its full value, no matter what happened to government "greenbacks," so every one put his gold safely away and paid out greenbacks when he had to pay out anything at all. The less valuable money had driven the more valuable out of circulation, just as it has done in all ages of the world. The

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principle by which it does this is known as Gresham's law, from Sir Thomas Gresham, who first formulated it over three centuries ago.

However, people had to have a certain amount of gold. Foreigners could not be compelled to accept "legal-tender" notes; they insisted on gold. So when payments had to be made to them, owners of greenbacks had to *buy* gold for the purpose. They bought it just as one buys a sack of flour, paying at one time (in 1862) about three paper dollars for one gold dollar. Even at the close of 1865 they paid three paper dollars for two gold dollars. From then on the price of gold slowly sank until, in 1879, sixteen years after the greenbacks were issued, the government got together a stock of gold and announced that it would redeem its notes at "par" on demand. Since then notes have had the same price as gold.

But they have had it only because the government stands ready to pay its notes dollar for dollar *on demand*. They still constitute a debt by the government. What are left of them (all but \$346,000,000 have been redeemed) are sustained by the credit of the government, just as a private person's notes are sustained by *his* credit—the belief of others in his ability to pay. As long as they stay at their present moderate total (moderate in proportion to the wealth of the nation) there will be no difficulty in sustaining them; but if their number should be increased so greatly as to impair the credit of the government, they would "depreciate" again.

National bank-notes (which with treasury notes represent indebtedness, not cash) also constitute a loan by the people. The loan, however, is not to the government, but to the banks that issue them. They are *not* legal tender, so they are not a forced loan, but a voluntary one. The government does not profit by them, it only supervises their issue and guarantees that they will be paid; and, owing to this guarantee, everybody is willing to take them (see page 43).

LOANS

TOPICS

What has your city or county been borrowing for lately?

Has anything besides metals and paper ever been used as money?

Can you think of some costly enterprise that might be of benefit to your town, but for which it would be unfair to tax future generations?

CHAPTER VII

COINAGE

Silver and Gold.—The Constitution empowers Congress to coin money and to “regulate the value” of coins—that is, to say how much gold or silver shall be contained in a particular coin. Of course, to say that a silver dollar shall contain so many grains of silver, and that a gold dollar shall contain so many grains of gold, is to “fix” the *relative* value of silver and gold. The Constitution, therefore, assumes to give Congress power to fix the relative values of silver and gold. As a matter of fact, however, Congress cannot fix this any more than it can fix the value of wheat. The values of the two metals will fluctuate according to the varying supply of them and the varying need for them, and they are very unlikely to fluctuate *together*. Congress can declare that a certain amount of silver is worth a certain amount of gold, but experience has shown that it cannot *maintain* such a relation indefinitely, although it may do so for a time by reason of the fact that the “demand” for gold and silver for coining purposes is a very large proportion indeed of the *total* demand for the two metals. And the demand helps to give the value. Congress can *determine* the values, but it cannot *fix* them.

This inability to “fix” values arbitrarily was proved, if proof be needed, more than seventy years ago. The first coinage act of the United States government, adopted in 1792, prescribed a silver dollar weighing just *fifteen* times as much as a gold dollar. After a while, however,

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gold began to be worth *more* than fifteen times as much as silver. When a jeweller, for instance, wanted a little gold, he found it cheaper to melt down a gold dollar than to buy the same weight of gold bullion. For this and other reasons gold coins began to disappear, and, at the same time, gold bullion became so scarce that it was difficult for the United States to get any to coin. Silver had been *overvalued* and had driven gold out of circulation.

In 1834 Congress recognized this fact by changing the ratio (or rather by declaring officially that the ratio had changed). The weight of a gold dollar was reduced from one-fifteenth to one-sixteenth of the weight of a silver dollar, thus for the first time establishing the famous ratio of 16 to 1.

However, the new ratio did not long remain in accordance with the facts. The influx of gold from California and Australia in the fifties soon made silver more valuable than it had been declared to be. Gold was driving silver out of circulation just as silver had before driven out gold. To meet this condition, it was necessary to do one of two things: either to make a new declaration as to the ratio or to "demonetize" one or the other of the two metals—that is, to reduce one of them to the class of "coppers" and "nickels," whose purchasing value has no relation at all to their commercial or bullion value. The second alternative was adopted in 1853 and was emphasized in 1873, when gold was made the standard and silver was made "subsidiary." The act of Congress which completed the demonetization of silver was, it was claimed, enacted by a trick and was afterward denounced as the "crime of '73." However, it was not repealed.

In 1875 silver began to decline heavily in value, largely because of its demonetization. For thirty years Congress tried in various ways to check this decline. It refused, however, to "remonetize" the white metal, and nothing short of this would have availed. Finally, after being a burning issue in several Presidential elections, the whole

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silver question was relegated to the background by Congress, which in 1905 stopped the coinage of silver dollars and definitely abandoned its efforts to sustain the value of silver.

The demonetization of silver did not mean that silver was no longer to be used as currency. The government still coins silver as the needs of the country demand, and it still declares that these coins shall circulate at a fixed value, just as it declares that a greenback shall circulate at a fixed value; it sustains them at this value (just as it sustains greenbacks) by standing ready to redeem them in gold at par on demand, but it does not attempt to fix the commercial value of the silver in the coin any more than it attempts to fix the commercial value of the paper in the greenbacks.

Any one can take a hundred dollars' worth of gold to the mint and get a hundred dollars in gold coins in exchange for it, paying only a trifle, called seigniorage, for the alloy which hardens the coin. But no one can take silver bullion to the mint in the same way, for silver bullion is at present worth much less than the coins that could be made from it. Yet, if coined, the government would have to stand ready to redeem the coins in gold *at par on demand*. Naturally, as it guarantees the redemption of the coins, the government must keep their manufacture in its own hands. If it stands ready to pay out a dollar in gold for a coin containing seventy-five cents' worth of silver, it must be sure that the silver only cost it seventy-five cents in the first place. The demonetization of silver merely meant the stopping of its "free coinage" for anybody who asked.

The silver in a dollar is worth to-day about seventy-five cents, this despite the fact that the once enormous demand for it for coining purposes has been cut off. Whether the renewal of this demand would raise it to "par" again, or whether the renewal of the demand would so stimulate mining as to actually *reduce* its com-

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mercial value, is a question too deep to be gone into here. It may be said, however, that the value of silver has been increasing pretty steadily ever since Congress, in 1905, *abandoned* its efforts to maintain its value artificially.

Gold and Silver Certificates.—The United States has about 1,600 million dollars' worth of gold and 700 million dollars' worth of silver in circulation. Yet we see comparatively little of it except in the form of small "change."

The reason is that nearly 850 millions of the gold and nearly 500 millions of the silver circulates, not in the form of minted coins, but in that of "certificates" which aver on their faces that the coin is on deposit in the Treasury ready to be paid out in exchange whenever required.

Gold and silver certificates have been issued since 1863. They are not money, but *representatives* of money, issued for the convenience of the people to save them from the difficulty and risk of carrying gold and silver coins about. They are not legal tender, though they pass current readily.

Bank-notes.—Bank-notes are different. They are literally "bank"-notes—notes issued by banks. They may be issued only by "national banks"—banks that have complied with the "national bank" act by submitting to periodical examinations of their books, and that have bought and deposited satisfactory securities (see page 53) with the Treasurer of the United States at Washington as security for payment of the notes. They are not legal tender—nobody is compelled to accept them in payment of a debt.

At one time enormous quantities of bank-notes were issued by banks without any supervision by the United States government and often without any *real* supervision by any state government. There is no law to forbid this nowadays; indeed, no *national* law *could* forbid it, for such a law would be tantamount to forbidding a bank to borrow money—a thing over which Congress has no right of control, although the *states* have. No bank, however, *does* issue its notes nowadays except in accordance with the "national banking" law, because Congress (to prevent

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losses and failures, etc.) has exerted its taxing power and imposed a tax of ten per cent. per annum on all bank-notes issued in any other way. So, though "state" banks, so called, still have the power to issue notes, they no longer find it *profitable* to do so.

TOPICS

How many kinds of paper money have we in circulation now? Explain clearly the difference between them.

How many mints have we in this country, and where are they?

What means have business men of paying bills besides using coins and paper money?

If a silver dollar, a paper dollar, and a hundred copper cents are utterly destroyed, does it mean a loss or a gain to the government, and how much in each case?

CHAPTER VIII

PRICES

The Money Problem. — Most of us take very little interest in any money problem except the one that concerns our personal ability to make both ends meet. We can get quite excited over the railway rate problem and over the tariff problem and over the trust problem, because we know—or think we know—that all of these affect our pockets, but most of us can see little connection between the money problem and our personal welfare.

This is largely because we do not know the money problem by its right name. If we should learn to know it by the quite as accurate and much more descriptive title of the “prices” problem, we should very quickly realize its importance to us, for prices come home to every one of us, millionaire or beggar, every day of our lives.

That we do not know it as the prices problem is due to the fact that money has two very different functions, one of which has obscured the other in our eyes. We have come to consider money almost exclusively as a very convenient medium of exchange, forgetting that it has an even more important duty as a standard of value—a sort of financial yardstick by which the value of everything else is measured.

A yardstick or a pound weight or a gallon measure are all stable, the same yesterday, to-day, and to-morrow, and we have very naturally come to believe that our money measure is equally stable. But is it?

If a certain sort of goods that sold for fifty cents a

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yard last year sells for seventy-five cents a yard this year, we say the price has gone up, because we have to pay fifty per cent. more money for a certain length of it. We forget that exactly the same condition would be brought about if the price remained constant and the yardstick shrank thirty-three and one-third per cent. We do not buy the cloth with our money any more than the merchant buys the money with his cloth; and, considering this one transaction only, we have no more warrant for saying that the price of the cloth has gone up than the merchant has for saying that the price of money has gone down. Instead of the cloth having become more valuable, it may be that the money has become less valuable.

Of course, since money buys all things, while cloth buys only money, an increase in the price of cloth and of nothing else would really mean that cloth had gone up. On the other hand, a general increase in all prices is good ground for very strong suspicion that money may have gone down. In the same way a general drop in prices may mean that money has gone up.

Fluctuations of Money.—But why should money go up or down? Why should it become more or less valuable?

Why should anything go up or down?

Obviously it does so because there is too much or too little of it to meet the needs of the community. If there is more of it than is needed, the article becomes cheap; if there is less than is needed, it becomes dear.

Exactly the same is true of money. Suppose you or I should suddenly find that all our money—all in our pockets and our banks and all we have lent out—had been reduced one-half overnight, what should we do?

The answer is obvious. After the first moment of horror-stricken surprise, we should begin to economize. We should cut our living expenses; do without things that we wanted; try in every way to spend less.

Now, suppose that everybody found themselves all at once in the same position.

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Nearly everybody would try to economize, and very quickly the merchants would feel the effect. Owing to the lessened demand, their sales would fall off and they would find themselves short of cash to carry on their business. They would cut prices in order to get cash even at a loss; they would demand a reduction in the rents they had to pay; they would curtail their orders to the factories; they would reduce wages. The factories would suffer in their turn; they would buy less raw material—and reduce wages. Finally, the farmers, miners, and everybody else who produced the raw material would be compelled to take less for their product—that is, they, too, would earn less. Interest rates would go up. Money would be scarce, and, consequently, would buy more. It would be *dear* as measured by everything else; or, what is exactly the same thing, everything else would be cheap as measured by it.

Suppose, on the other hand, that everybody's money doubled overnight; what would be the first thing most of us would do?

Again the answer is easy. We should promptly increase our expenditures. We should buy things we had long wanted but had never been able to have. Results would quickly follow. The increased demand would enable merchants to put up prices and would lead them to send larger orders on to the factories, which in turn would stimulate the producers. Employees would find that their wages were inadequate, because prices had gone up. They would demand increases, and, generally speaking, would get them sooner or later—the farmers, miners, etc., getting their increase in the shape of larger prices for what they produced. Interest rates would fall; money would be plentiful and would buy less. It would be *cheap* as measured by everything else.

Of course, the money in a country does not double or halve itself overnight, but it is not necessary for it to do so in order to produce the effects described. If the normal money increase, no matter how large it may be, lags be-

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hind the business increase, the supply will sooner or later become inadequate to the needs of the country, and—other things being equal—its value will increase, causing dear money, high interest, low rents, low wages, and low prices. If it increases faster than the needs of the country, its value will decrease, causing cheap money, low interest, high rents, high wages, and high prices.

Any change in the value of money, whether toward cheapness or dearness, is a bad thing, because it changes the yardstick by which we measure everything. Moreover, it changes it stealthily. We are a long time finding out that it has changed it. We know that something is wrong; either we feel that we are being charged too much when we buy, or we feel that we are not getting enough when we sell, but we are in great doubt where to lay the blame.

It is not so much the actual amount of money in the country that makes trouble; it is the disproportionate change in the amount. The United States can adjust itself to nearly any monetary condition, if that condition would only continue. If its money were really reduced by half in a night, people who owned cash or property bringing in a fixed income (such as government bonds) would profit greatly (at the expense of others), because their cash would buy more; but most of the others, after passing through a strenuous period of retrenchment, would find themselves back in about the same condition as before. Their wages would be lower and their business generally would earn less, but they would have to pay lower prices for everything except interest.

On the other hand, if money were really doubled in a night, people who owned cash or property earning a fixed income would lose heavily (to the profit of others), because their cash would buy less of other people's goods or labor. But the great mass of people, after passing through a period of extravagance, when they thought they could buy everything they wanted, would finally find themselves back in about the same condition as before.

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Their wages would be higher and their business would earn more, but they would have to pay higher prices for everything except interest.

To be fair to everybody, the value of money should be reasonably constant. It should not fall, and thereby rob the thrifty of fair earnings from their savings; and it should not rise and enable the thrifty to rob others by means of inordinate earnings from their savings. In other words, the value of money should be constant, and it can only be kept constant by suiting its supply to the needs of the country.

Money Needs of the Country.—But what are the needs of the country?

Ah! there's the rub. Every country, almost every year, is a law to itself. Dump one hundred millions in gold into France, and most of it would disappear—hoarded in old stockings or in pots buried under hearth-stones, where it would affect prices not at all and whence it would come out only long afterward. Dump the same amount into the United States in a boom year, and a week later most of it would be invested in wildcat stocks; dump it in during panic times, and it would go into savings-banks and thence into solid, long-time investments, mostly in real estate. Only infinite intelligence can tell what the United States will need in any future year.

Along in 1905-06 there seemed to be plenty of money in the country. Anybody could organize a company, start a business, and sell the stock. Everybody was making money and was wild to make more; to a very large degree people economized on their personal purchases and invested in stocks that they hoped would make them wealthy for life. Prices for food, clothes, etc., did not go up so very fast, for the money that would have sent them up was being shipped to the great money centres to be invested in enterprises, many of which, as the least investigation would have shown, were bound to fail. And, of course, many were fraudulent.

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Finally the crash came. The wildcat enterprises got into trouble and investors grew frightened and began to lessen their shipments, spending their money at home and forcing living prices up. Shaky and doubtful enterprises (those that had a chance of making good if the golden stream would continue long enough) wobbled and fell. Investors drew back still more, giving home prices another hoist; finally, ordinarily safe and reasonably sane enterprises crashed down into the ruins.

After it was all over the average American, who had been stinting himself to buy stocks of which he knew nothing, drew a long breath and decided that he had not been so badly hurt, after all. He still had good wages or a good business. He had lost his surplus and been ruined in his expectations, but he could retrieve himself. But he had had enough of stock-buying for a while.

The result was that money became scarce. Splendidly promising enterprises had to be abandoned; gilt-edged stocks and bonds sold lower than ever before; the banks never cashed a check if they could help it.

Men who needed money to develop the country were wild with anxiety. They besieged Congress, claiming that there was not money enough. They *knew* their stocks and bonds were solid, and it seemed to them very hard that they would not sell. They thought this must be because the people had not money enough, when the fact was that the people had the money but had lost confidence in investments.

All the time the money in the country was increasing at the rate of more than one hundred millions a year; in eight years (since 1900) it had increased nearly fifty per cent., while in the same period our population had increased only about fifteen per cent., and our wealth only about twenty per cent.

In 1908 the United States had more money (gold, silver, and uncovered paper) than any other country in the world—five times as much as the United Kingdom of

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Great Britain and Ireland, three times as much as Germany, and more than twice as much as France. It had more money in proportion to its population than any country in the world except France. It had more than thirty-four dollars for every man, woman, and child in its eighty-seven millions population. Holland, Belgium, Australia, and Germany came next with twenty-five to twenty-eight dollars; the United Kingdom of Great Britain and Ireland had only sixteen dollars. Yet some people think we need still more money.

It is very difficult, then, to guess the needs of the future or even of the present. In the United States, especially, the problem is complex.

In most countries money is hoarded to a greater or less extent. France, India, and Mexico, for instance, are tremendous hoarders; and other countries are so to a less degree. In the United States, however, hoarding is almost unknown. We all invest our savings or else put them in a bank—which, of course, must invest them. Our banks, indeed, lend out every cent that they safely can. The result is that any enterprise suddenly demanding a large amount of cash often has a hard time in getting it, irrespective of the value of the investment, unless the people will put their savings into it.

Again, the United States has certain problems to face which no other country has. Other countries are either smaller or less diversified, or, if large and diversified (like Russia), are comparatively undeveloped. No other land, for instance, has to deal with any such problem as the annual moving of the crops of the United States.

The wheat raised in the United States in 1907 was valued at about five hundred and fifty million dollars. About four hundred million dollars' worth of this was grown west of the Mississippi River. Within three months, at the most, practically all of this four hundred million dollars' worth had been sold by the growers for *cash*, and

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had been moved by railroad, much of it more than a thousand miles, to market.

Whence came the enormous amount of cash required to make these payments?

Each year, by early summer, the farmers are getting very short of ready money. When it comes to paying the expenses of harvesting, most of them must borrow on their notes from the banks.

The banks are usually low in cash in the spring of the year. They have sent their surplus funds East to be lent out for short terms at high rates of interest. In the early summer they begin to call these funds in and to borrow more from the East, so that when the farmer wants the cash he can get it. They "carry" him for one or two months till he sells his wheat.

When he does sell it, he pays his notes, and the bank sends the money back East. Next he spends the remainder liberally. He feels himself rich. Sometimes he sends the money East to pay for articles manufactured there; oftener he buys from dealers who have been supplied from the East on credit. In any event, the money goes East again and seeks investment. Thus several hundred millions flow West in the spring and summer, and East again in the late fall. When it goes West there is very apt to be a stringency in the East, which really needs a large part of the money itself. When it pours East again, seeking investment, it usually starts a period of speculation. Enterprises languish in the East while it is gone (times are "dull"); enterprises boom far beyond safe proportions when it comes back.

Money Supply.—The fact was long ago recognized that our legitimate needs are much greater at one time of the year than at another, and numberless plans have been proposed to provide the excess when it is needed and retire it when the need has passed.

Our money consists of gold (\$1,600,000,000) and silver (\$700,000,000)—largely in the form of gold and silver

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certificates, which represent coin kept in the United States Treasury and are issued only for our convenience; United States notes (\$346,000,000), to maintain which the Treasury holds a gold reserve of \$150,000,000; and bank-notes—promises to pay issued by banks (\$650,000,000 in 1908).

Our stock of gold, depending, as it does, on the production of our mines and the balance of trade with other countries, is largely beyond our control. Silver is no longer coined, and its amount is constant. The amount of United States notes is fixed by law and is not allowed to change. The issue of bank-notes, however, is always varying.

Until recently, in order to issue notes, a national bank had to buy United States bonds, on whose par value it received interest (chiefly two per cent.), and deposit them in the United States Treasury, which then furnished it with an equal value in bank-notes, which the bank would lend out as it was able. If it got five per cent. from these, its total income from the money it had in bonds would be five plus two, equalling seven per cent. As a rule, however, the banks had to pay more than par when they bought the bonds (reducing the interest rate on their *investment*); and as they lost this excess when the bonds were finally redeemed, the net profit was really very little more than they would have derived by lending out the money directly without going through the cumbersome process of buying bonds and taking out circulation on them. In short, "circulation" paid so small an additional profit that many banks did not bother about it at all.

In 1908 Congress adopted a law permitting banks to deposit securities *other* than United States bonds with the Treasurer of the United States and take out circulation on them. On bonds of states, cities, etc., they could take out ninety per cent. of the cash value; on commercial paper, notes, etc., they could take out seventy-five per cent. of the cash value.

This sort of circulation would naturally be very prof-

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itable. On the commercial paper, for instance, the banks would already be earning about five per cent.; by issuing bank-notes to seventy-five per cent. of the value, they could earn nearly four per cent. additional, thus furnishing abundant inducement to expand their circulation to meet any sudden need.

Expansion, however, was only half the problem. Contraction when the need had passed was also essential, and to secure this such circulation is *taxed*. For the first month after issue the tax is very light, only five-twelfths of one per cent.; but for each succeeding month it is one per cent. It is calculated that this tax (which is limited to a total of ten per cent. a year) will compel the banks to call in their notes and redeem them unless the need for money is so great that they can afford to pay a heavy rate for the privilege of keeping them afloat. Thus for the first time the United States has adopted an automatic device for expanding and contracting its money to suit the changing needs of the country.

It is too early yet to be sure that the plan will work, but there seems to be no reason why it should not. If it does, the country should be spared from the periods of alternate overspeculation and panic that have so troubled it in the past.

TOPICS

How can the money of a country increase fifty per cent. while the wealth of the country increases only twenty per cent. in the same time?

If a man buys a pair of shoes for four bushels of wheat, what is this kind of trading called?

Why was not this form of trading kept up?

PART III.—LEGISLATIVE POWER OVER COMMERCE

CHAPTER IX

REGULATION

Nature of Commerce.—Commerce is exchange of products between people of one place and those of another. If it is between two independent countries, it is called foreign commerce; if between two states, it is interstate commerce; if between two places in the same state, it is intrastate commerce.

Commerce is not a swindling operation; it is beneficial to both parties engaged in it. Even in such cases as that when a trader sells glass beads or looking-glasses to savages for lumps of gold he does not cheat them. They want his goods quite as much as he wants their gold. In fact, the advantage may very easily be on their side, for the gold in many cases is probably of less value to the savages than the beads are to the trader.

Restrictions. — Being beneficial to both parties, commerce should be fostered, and should never be restricted except to gain some good greater than would result from its free exercise. Customs tariffs, for instance, hinder commerce, but they supply the government with revenue and may aid to build up the industries of the country; whether the *gain* from this last equals the *loss* caused by the restriction is a question on which men are not agreed (see pages 63-70).

Any restriction on commerce tends to raise the price of products in some places and to reduce it in others. For

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instance, if a bridge is washed out by a flood, hindering the shipment of perishable foods, these may have to be thrown on the local market for anything they will bring, causing a "glut"; on the other hand, the greater market whither they were being shipped may suffer a "shortage," making the price there unduly high.

Restrictions on commerce are either (1) natural, such as are due to distance and difficulties of transportation, or (2) artificial, such as are due to deliberate interference by men.

Artificial restrictions are of two sorts: (1) governmental, chiefly such as are due to taxes—customs and internal revenue; and (2) private, such as are due to monopolies of one sort or another—monopolies which seek to control the *production*, the *manufacture* or *marketing*, or the *transportation* of goods. Monopolies that seek to control production are, for instance, farmers' associations that restrict the acreage planted of a particular staple or hold back the crop of that staple in order to force up the price. Monopolies that seek to control manufacture or marketing are the familiar "trusts." Monopolies that seek to control transportation are to-day chiefly the railroads.

In all cases the question should be, Is the benefit derived from the restriction equal to the loss caused by it? Farmers' associations may very well need restrictions to put an end to overproduction that is ruining them all; trusts may need them to put an end to cut-throat competition; railroads may need them to stop a rate war that is plunging them into bankruptcy. For neither farmers, nor trusts, nor railroads can long continue to do business at a loss.

But however necessary or advisable restrictions may be, it is obviously improper to permit those who will *benefit* from them to decide for themselves the degree that they shall go, or even to determine whether the good they will do to some people will overbalance the harm they will do to other people. There are always two sides to the question,

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and the monopolizers are naturally and rightfully on their own side; but the public—those who have to suffer from the restrictions—unquestionably should have some voice in them. Those who benefit from the protective tariff should not have the sole say as to the rates of duty imposed, any more than the farmer, or the manufacturer, or the railroad should have the sole and unrestricted say as to the price he may fix on his own products. The public has *some* rights.

In the United States the public has confided to the government the right to consider and maintain these rights; it has granted the supervision of interstate and foreign commerce to the national government; and it has granted the supervision of intrastate commerce to the state governments.

Means of Regulation.—Congress may “regulate” interstate commerce in several ways: (1) by taxing it, directly through customs duties or indirectly through various charges; (2) by requiring that it be made safe, through safety devices, steamboat inspections, etc.; (3) by insisting that the charges for it shall be reasonable and shall not discriminate unfairly in favor of particular places or particular men; (4) by protecting it against restraint by monopolies; (5) by prohibiting it either wholly or in regard to certain articles.

A *protective tariff* is the principal instrument by which Congress exerts its taxing power to regulate commerce. A *revenue* tariff (one laid solely for the sake of the revenue it yields) regulates commerce only incidentally; but a tariff designed, as all modern United States tariffs are, to “protect” the industries of the country is, of course, a direct and intentional regulation of commerce, even though it is done by the authority granted to Congress “to impose taxes” instead of by the authority, also granted it, “to regulate interstate commerce.” (See page 31.)

Protective tariffs, however, are not the only means in which Congress taxes commerce. It may tax a tool of com-

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merce out of existence if it sees fit to do so; as, for instance, when it taxed the notes of state banks so heavily that their use had to be abandoned (see page 43). It may require all vessels to pay pilotage fees whether they need pilots or not. It may impose the ordinary internal revenue taxes on whiskey, tobacco, etc.; for these, though imposed chiefly for purposes of revenue, are also imposed for the restrictive effect on production. The oleomargarine tax, for instance, is wholly for purposes of restriction. The only restriction on the power of Congress in this respect is that all such taxation must be *uniform* in all parts of the country.

In regulating for safety, Congress may prescribe methods for the transportation of explosives; build lighthouses and establish life-saving stations; inspect steamboats; require trains to be fitted with safety devices and engineers to submit to eyesight tests; regulate the hours of work of all persons, including telegraph operators, "engaged in the movement of trains," etc. Such regulation, of course, extends only to foreign or interstate commerce.

Reasonableness and fairness to all in charges for transporting interstate commerce may be required by Congress, although so far it has acted only in regard to railway rates, leaving water navigation uncontrolled. According to the law of 1887 and more recent laws, railroad rates must be reasonable—that is, they must be neither unduly high nor unduly low; they must not unfairly discriminate against individuals or places or classes of freight; they must not (where the service is equal) carry one man's goods more cheaply than another's or one town's goods *unreasonably* cheaper than another's, or charge unduly high rates on one article as compared to another (they must not discriminate *unfairly*, for instance, between wheat and corn). (See page 78.)

Protection against "trusts," whether of production, manufacture, or marketing, is a rapidly expanding form of the government's work. By a law adopted in 1890 and

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by other later laws, all made by virtue of the authority to regulate interstate commerce vested in Congress by the Constitution, every contract, combination, or conspiracy in restraint of interstate trade is illegal and is forbidden. Two competing railroads, for instance, may not combine and destroy competition. Railroads may not engage in other occupations (coal-mining, for instance), because they would probably favor their own products as against other men's products. Most cases that have arisen under the anti-conspiracy law have been in connection with railroads, because railroads are the chief instruments of interstate commerce. There are other cases, however, in which railroads play a subordinate part. Great corporations, for instance, may not monopolize any particular business of the country; if they do, the national government may seize their goods, *if shipped across state lines*, or may bring suit in the courts for their dissolution. Manufacturers of particular brands of goods, for instance, may not make contracts with retailers in other states forbidding them to "cut prices" on penalty of refusing to deal with them if they do (see page 87).

A farmers' trust to raise the price of tobacco or cotton or fruit is just as much a conspiracy in restraint of trade as is a combination to raise the price of oil, and is equally forbidden by the strict *letter* of the law. There is, however, a real difference between them so far as the spirit of the law is concerned (see page 85).

Prohibition of commerce may be particular or general. In 1807 an "embargo" was laid on all foreign commerce of the United States; no ships or cargoes were allowed to be sent abroad; this law lasted nearly two years. It was adopted on account of English interference with our trade—interference that later resulted in the War of 1812. This was the only general prohibition of commerce the United States has ever had. Prohibitions directed against particular articles, however, are not uncommon; foreign reprints of American copyrighted books, and foreign manu-

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factures of American patented articles, for instance, are forbidden entrance into the United States; as are also animals or plants that may become dangerous.

Such prohibition has so far been applied to foreign articles only, but there seems to be no reason why Congress should not adopt similar laws in regard to subjects of interstate commerce—to whiskey, for instance. Such a prohibition would probably have to be *uniform* over the whole country, but there is little question that it lies within the power of Congress to decree it (see pages 232-234).

TOPICS

What is an embargo, and what use has been made of it in this country? Has it been a successful method of regulating commerce?

What use have we made of ship subsidies in this country? Do you think we might increase our commerce by that means?

What is the principle of reciprocity?

In what ways are introduced plants or animals likely to become dangerous in a country?

CHAPTER X

THE PROTECTIVE TARIFF

A CUSTOMS tariff is laid, in the first place, to raise revenue. The United States customs tariff yields more than half the entire income of the government, and does so, to all appearance, in a less burdensome way than any other that could be devised.

But a tariff does more than raise revenue. Even when levied for no other purpose, it cannot help but affect commerce more or less, and by careful adjustment it can be made to affect it profoundly. When so levied as to stimulate domestic production, it is called a protective tariff, from the "protection" it affords to domestic producers against foreign production.

Effect of a Protective Tariff.—The effect of a protective tariff is complex. Customs duties are not collected directly from those who ultimately pay them. They are paid in the custom-house by the importer and are re-collected by him from the consumer in the shape of increased prices when he sells the goods. Necessarily they raise the cost of *imported* articles. They also raise, *or tend to raise*, the prices of the same articles when produced at home. As the government derives no revenue from the domestic products, a protective tariff seems on its face to compel the consumer to pay a bonus to the producer. Whether it really does compel such payment, except temporarily, and whether in any case it does not produce other effects so beneficial as to warrant its imposition, are questions that have been in dispute since the foundation of the government.

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The old school of political economists, which grew up in England about 1775, held that every country, every district, every town, would find its best profit if it would stick to the work that it could do best and refrain from undertaking work that other people could do better. If a country was naturally a manufacturing country, they argued that it would pay it best to keep on manufacturing and buy its food from a naturally farming country—which, of course, would find it most profitable to keep on farming and buy its manufactures from a country that made a business of manufacturing. England, they asserted, being a manufacturing country, with great stores of coal and iron, well fitted to manufacture cheaper than any other country in the world, would find its best profit by devoting itself to manufacturing and by letting other countries grow its food for it. This distribution of labor would result in the least possible waste.

The only possible fault to be found with this argument is that it assumed that a manufacturing country must always remain a manufacturing country, and that a farming country must always remain a farming country. If this were true, the argument would be indisputable. Unquestionably it costs more to start a manufacturing industry in a new country than it does to continue an old one in an old country. Unquestionably there must be loss to somebody during the first years while the new industry is getting acclimated. But it is not true that this loss must necessarily continue. Perhaps it may. Perhaps the natural conditions may bear so heavily against a particular industry that it will always cost more to carry it on in one place than in another. In that case, the question whether it is worth while to continue it ought to be considered seriously. But until this has been demonstrated, it is always possible that a farming country may transform itself into a manufacturing country if it can devise some means of getting over the transition period.

But how is the transition period to be passed? If the

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cost of making woollen goods in the United States, for instance, is greater than the cost of making them in England, plus the cost of sending them here, it is obvious that the Englishman could undersell the American, and that the latter would only lose money by trying to manufacture. But if the Englishman has to pay a duty on his woollens when he brings them over, he can no longer afford to sell them *so* cheaply; if the duty is high enough, he can no longer afford to sell them *as* cheaply as the American can make them. A "protective" tariff is one that imposes duties that are high enough to equalize the costs of production and give the domestic maker a chance to establish and carry on his business. As it is very difficult to discover the actual differences in cost of production, it is correspondingly difficult for even the most well-intentioned tariff-maker to make the duties just high enough—especially as manufacturers believe, rightly or wrongly, that higher duties are beneficial, and are always clamoring for them.

Development of Protection.—Protection is nothing new. In ancient days when a country wished to build up the manufacture of an article, it "prohibited" its importation. Later, but centuries ago, some genius discovered that high duties would have the same effect, and would at the same time bring in some revenue. Years ago England was strongly protective, though her protection was directed to agriculture rather than manufactures. The United States had a protective tariff more than a hundred years ago.

But it was not until the time of the great Civil War that the full possibilities of the tariff were discovered. In order to get vast sums of money to carry on that war, the tariff rates were made higher and higher, and by these and other means the necessary funds were obtained.

Then the collateral results began to appear. Hundreds of industries sprang up, making articles which the "protection" afforded by the tariff enabled the makers to sell

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at a profit. But—don't forget this—the people had to pay a higher price for all these articles. If they bought the imported articles, the increase in the price paid back the money that the foreign manufacturer had paid to the government when he imported them. If they bought the domestic articles, the increase went to pay the greater expenses of domestic manufacture. It is not asserted that it went to the manufacturer to do what he liked with; to assert this would be to beg the entire tariff question; ostensibly, at least, it went to him to pay the greater expenses of manufacture, and for the moment it may be assumed that he used it for that purpose.

When the war was over, and it was proposed to reduce the duties, the protected manufacturers objected. They declared, quite justly, that it still cost more to manufacture over here than it did abroad, and asserted that if the duties were removed they could no longer continue to manufacture—that is, they asked the people to keep on paying them to keep their factories running.

And the people did.

Conditions have changed since then, and the people are asking whether it is still necessary to continue to pay to enable domestic manufacturers to continue a business which they themselves admit (or assert) would otherwise be done only at a loss. Is the transition period over? If not, will it ever be?

Both Sides of the Question.—This is the tariff question in a nutshell. Should we pay this bonus or should we not? What do we get in return for it? What does it cost us? Would not a less tariff (and a less bonus) or no tariff serve just as well?

Different answers have been returned to all these questions. Let us consider them in turn.

First, should we pay any bonus? Some people hold that all protective tariffs are illegal. They say that the government has no right to make people pay a bonus to a manufacturer, no matter how desirable his business may

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be. They assert that any tariff except one for revenue only is robbery.

Of course, there is no answer to this except flat denial of its truth. If it is admitted, no plea of justification can save the protective tariff. It ends all argument. The assertion, however, is of no practical importance; as the country has decided, rightly or wrongly, by a hundred years of practice, that a protective tariff is legal. Whether or no it is *advisable* is another matter dependent on the second question, What do we get for it?

Benefits of the Protective Tariff.—First, we get economic independence. It is a bad thing for one nation to be dependent on another for the necessities of modern life. It is a bad thing for England to be dependent on other countries for its food—so bad that England is compelled to maintain a navy as great as those of any other two countries combined, largely to guard against the possibility that she may lose command of the seas and be starved out. England, however, cannot change this state of affairs and must make the best of it. It would not be quite so bad for the United States to be dependent on other nations for her steel, for instance; but it would be bad enough and might be ruinous. Industries cannot be built up in a moment when need arises. Protection builds them up and keeps them ready. This readiness is one thing we buy with our tariff bonus.

Second, we keep our money at home by it. This is a real gain, though it would have been laughed to scorn by the old school of political economists, one of the cardinal tenets of whose faith was that money was worth no more than what it bought. One party to a bargain, they argued, did not buy lumber with gold any more than the other party bought gold with lumber—whichever side of the bargain one was on, he was equally well off. If the United States sent all its gold abroad to buy manufactures, it would, they asserted, be just as well off because it would have the manufactures. They ignored the fact that money

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is fluid and circulates rapidly, while manufactured articles usually "stay put."

This argument was all very well a century ago when people did business slowly. It is not so far wrong to-day in Europe, where they do things on pretty much the same old lines. But in the United States at least it is preposterously wrong. Every year we in this country pay for railway freight and passenger fares alone more than twice all the gold, silver, and uncovered paper in the country; for food we pay all of it two and one-half times over; for clothing, etc. (textiles), we pay all of it twice over; for lumber we pay all of it once; and other things in proportion. Most of these payments are made by checks, but checks depend on cash—not on things bought with cash, but on cash itself. Send the cash abroad and our system would topple in a day. Protection tends to keep the cash at home. This retention of cash is another thing we buy with our bonus.

Third, we build up a great domestic market. It needs no argument to show that without the stimulation of the protective tariff we should not have anything like our present industrial population, and should have to send a far greater proportion of our food products abroad to be bought by low-waged people, instead of keeping them at home to be bought by high-waged people. Conversely, the farmers furnish a great home market which is secured to the industrial workers by the tariff. This home market is a third thing we buy with our bonus.

It is argued, also, that we owe our high wages to the tariff. Perhaps we do, but if so, the fact has not been proved. If protection makes wages high in the United States as compared with England, what makes wages high in England as compared to Europe? The United States has high tariff, England has free trade, and Europe has high tariff. Yet English wages are less than the one and greater than the other.

Wages undoubtedly depend greatly on the efficiency of

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the workman, and efficiency may in turn depend greatly on the hope of getting high wages. If a workman in the United States paints a wagon in eight hours, and if a workman in England cannot do it in less than twelve hours (which is about the fact), the first workman ought to earn more than the second. If a laborer over here does fifty per cent. more work in the same time than a laborer in England, and if a laborer in England does ten per cent. more work in the same time than a laborer in Europe, that alone would account for much of the difference in wages.

It is difficult to calculate the exact differences in efficiency, but there is no doubt that they are great and are in our favor. This being true, it is evident that while protection may raise wages somewhat, in any event wages in the United States would be higher than elsewhere even without protection.

Leaving out wages, then, we have three important things that we buy with our bonus. To it we owe economic independence, financial stability, and a great home market. Everybody admits that all these things are desirable, and practically everybody admits that they are produced and preserved, in large part at least, by the protective tariff.

Cost of the Protective Tariff.—Now, what does the tariff cost us?

This is a very difficult question to answer. Roughly speaking, of course, it costs us the difference between what we spend under present conditions and what we should spend if we had no tariff. But how are we to calculate this amount? The actual duties do not help us much; we cannot say that the average of all the duties is sixty per cent., and that therefore we pay sixty per cent. more than we should under free trade. For the prices of domestic manufactures are not always nor even often as high as the tariff would permit them to be.

Take a concrete example. Suppose that, owing to the tariff, foreign-made hats of a certain grade cannot be sold

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in the United States at a profit for less than three dollars. Suppose for a moment that there is but one manufacturer of these hats in the United States. He *could* not sell them for more than three dollars, because if he did the foreigner would come in and undersell him. He *need* not sell them for less than three dollars, because he has a monopoly.

But everybody knows that there are many hat manufacturers in the United States, each of whom is competing with all the rest, and is trying to sell as cheaply as any one else. If three dollars pays a great profit, some of the manufacturers will try to get the lion's share of the trade by selling at a less profit. Other manufacturers must, of course, follow suit. It results that (barring a combination among hatters to keep the prices up) prices will come down until hat-making yields only a fair profit. And even if a combination is formed, it usually cannot keep prices much too high for very long, for big profits will cause other men to go into hat-making, and this will ordinarily smash prices. The net result, it is argued, has been to reduce prices till the business pays only a fair profit on the capital and labor invested.

This is a protectionist argument and is only partly admitted by anti-protectionists, who assert that as long as foreigners continue to import an article, it proves that the domestic maker must be taking nearly, if not quite, full advantage of his protection, as otherwise the foreigner could not afford to sell in competition with him. It is given merely to show that the tariff on any article is not necessarily a measure of the increase in the price. The increase may be anywhere from nothing up to the full amount of the duty. What the tariff costs us as a whole, then, varies, roughly speaking, from nothing up to sixty per cent. of our annual expenses—sixty per cent. being the average duty imposed on all articles by the existing tariff. Between these limits one man's guess is as good as another's.

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Tariff Rates.—Only one question remains: Are we paying too high for what we get? Could we get it at a less price?

The question is one of fact, and can only be solved by the facts in each particular case. Unfortunately, the facts are difficult and often utterly impossible to obtain, and, in default of the facts, we can only guess to the best of our ability. It is just as well, however, to understand that we are trying to guess a very complex riddle: to guess what per cent. of duty—ten, fifty, one hundred, two hundred—will be just enough to enable a factory to keep on working and pay a reasonable profit, and to guess this for factories working in very different localities and under very different conditions (in Boston, Chicago, San Antonio, anywhere), and to guess it not for one article, but for several thousand different articles. It makes one dizzy even to think of it, and it takes a very wise—or a very foolish—man to venture to guess at all.

We are not, however, altogether at sea in our guessing, for we have some guidance in the effects of the existing tariff. If a certain article is not made in the United States, and if our custom-house records show that it is largely imported, and if physical conditions are such that it is probably only a question of cost that prevents it being made here, then—if we want to manufacture it—we must ordinarily increase the duty on it. On the other hand, if an article is not imported or is very little imported, and if that article is one that is made abroad and is in demand in the United States, it follows that the existing tariff is higher than is needed by domestic manufacturers, and that it can probably be reduced more or less without doing any damage. Finally, if it is found that factories manufacturing certain articles regularly ship their goods abroad and sell them in the markets of the world in competition with foreign products at lower prices than they do in the United States, we may fairly conclude that the tariff on those wares is unnecessary and ought to be removed al-

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together. Before reaching this conclusion, however, we should make sure that the practice is continuous and general, for if done only once it might merely be a case of a factory saving itself from greater loss by selling an overproduction for anything it would bring. But if the same thing is repeated year after year, it is fair to conclude that the industry finds it profitable to overproduce, just as some merchants apparently find it profitable to have an annual fire to consume their unsalable stock. Such a fact is worth more than any amount of argument, as the professor said when he found a minnow in the "unwatered" milk his dealer sold him.

TOPICS

What is the average tariff now imposed on imports? Has the average had a tendency to increase or decrease?

What is meant by a prohibitive tariff? Why is it that if you tax woollen cloth a dollar a yard you are likely to get a greater gross revenue than if you tax it a hundred dollars a yard?

If there are high tariffs on both leather and shoes and the duty on leather is removed while that on shoes is retained, does the shoe manufacturer or the consumer reap the most benefit, as things commonly work out?

CHAPTER XI

RAILWAY RATES

Interstate Commerce Law.—The law of 1887, popularly known as the interstate commerce law, provides that railway rates must be reasonable and must not discriminate between persons or places.

Return on Investment.—These provisions seem reasonable enough, but practically they are very difficult of application. Suppose, for instance, it should be agreed that rates that would enable a railway to pay five per cent. on the value of its property should be considered reasonable. Leaving all other difficulties aside, such a principle could be carried into effect only by determining the value of the property, and any attempt to determine this value creates half a dozen new problems. Is it to be based on what it cost to build the line in the first place, or on what it would cost to duplicate it now? Many of our railways were admittedly plundered outrageously by their builders, and therefore cost far more to build than they should have cost; on the other hand, a road opening up a new and partly unsettled country obviously costs more to build than it would cost to duplicate after the country had been settled. Is it to be based on par values or market values of stocks? This is a most uncertain basis. The par value of all railway stocks admittedly contains a great deal of "water," while the market value fluctuates tremendously, dropping as much as a third or even a half from prosperity rates during the latest panic. In 1907 and again in 1909, in a case in court the engineers of the Northern

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Pacific and Great Northern railways estimated the cost of reproducing those properties; in 1909 their figures were twenty-five per cent. higher than in 1907.

Luckily, the value of the investment has not, as a rule, determined the reasonableness of the rates.

Weight of Articles. — In pre-railroad days wagons charged by weight for hauling ordinary freight, making special rates for unusually light or heavy articles. Distances (on land) were usually short; if they were long, the cost of freighting swallowed up the original value of the freight. Similar conditions occur not infrequently to-day in new mining-camps in the West, where coffee, flour, sugar, lard, bacon, beans, and so on, may all sell for a short time at a dollar a pound.

When the railways came in, they started out to charge by weight. But it soon became apparent that such a plan would not work with cheap and heavy articles. For instance, it was found that wheat could be shipped a long distance at a rate that would soon eat up the total value of coal; at one-tenth of a cent a hundred pounds the charge for moving wheat a hundred miles would be only ten cents, or, say, about six per cent. of its value, while the charge for moving anthracite coal for the same distance would be two dollars and forty cents, or, say, forty per cent. of *its* value. Uniform charges meant that the cheap and heavy articles would not be moved at all.

A railroad must run its trains and keep its tracks, bridges, etc., in repair whether it has passengers and freight or not. It must pay interest on its construction bonds whether it has freight or not. It must take its cars back to the chief freighting point even if they have to go empty. Therefore, it can often afford to carry freight at less than cost, because even a small return is better than no return at all.

Rates based on weight deprived the railway of these small returns which were so necessary to its welfare, and compelled the adoption of another system familiarly known

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as that of charging "what the traffic will bear." Nowadays, rates are based very little on weight or bulk, rather more on value, and most of all on the exigencies of the case. They are made low enough—and only just low enough—to induce enough freight to move to yield the maximum profit. If a certain rate will cause one thousand tons of a commodity to move at a net profit of one cent a ton a mile, and a lower rate will cause two thousand tons to move at three-fourths of a cent a ton a mile, the railroad will prefer the lower rate, because the total net profit from it will be higher.

Fixing Rates.—Twice a year agents of all Eastern and Northern roads meet in New York and "classify" goods likely to be offered for transportation during the ensuing six months, dividing them up into eight classes. This scheme, which is much the same as that of the post-office, with its four classes of mail matter, is called the "standard" classification. Another scheme, which governs rates in the South, is known as the Southern classification; while a third, which obtains in the West, is called the Western classification.

After the agents have finished their classifying, they turn the matter of their work over to another committee, which decides what rate shall be charged on each class of goods.

These agents have been fixing rates for a long time now, and can tell pretty accurately what rate will bring in the maximum profit. If the event shows that they have guessed wrong—if a particular rate does not induce the freight to move freely on the one hand, or if it does not yield as much as the railroad expects on the other hand, it is discarded and another is tried, and, if necessary, another and another. If freight falls off, it is concluded (other things being equal) that the rate is too high and must be reduced; if freights come with a rush, it is concluded that a higher rate could be exacted. The whole process is the familiar mathematical one of solution by "trial and error."

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Under the Mann-Elkins act, 1910, the powers of the Interstate Commerce Commission were enlarged. It may now, on its own initiative, and without waiting for a complaint, take up any cases of rates or practices that seem unreasonable. Henceforth no railroad may raise rates without first securing the consent of the commission. A Commerce Court has also been established. It has exclusive jurisdiction over certain suits brought by the commission to enforce obedience to its orders; over appeals brought to set aside an order of the commission (in which case the court has the discretion to suspend the rate until the appeal has been heard); and over suits brought under the Elkins act against illegal discrimination (rebating) or departures from the published rates.

The classification and the rates, however, are not binding on the roads. Indeed, they cannot be, because the law forbids such "combination." Hence they are considered only in the light of "advice" from the agents to the separate roads. All the roads, however, at once adopt them, but only as a basis, for each road can and does make dozens of special rates. These special rates are termed commodity rates, because each applies to only a single commodity which is excepted from the general classification scheme.

The reasons for making commodity rates are infinite. Suppose, for example, that a man goes to a road and says (often with entire truth) that he wants to build a factory at some place along its line, but that he cannot afford to do so unless his product is handled for less than is charged by the existing rate.

Of course, the road wants that factory on its line. A new factory means new people, and new people mean new freight. The road might even afford to carry the factory's goods at a loss and yet make a net profit from the freight for the town that will grow up around the new enterprise. In the old days the road would have agreed to give the manufacturer a secret rebate; nowadays, when rebating may bring a heavy fine, it meets the request by establish-

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ing a special (commodity) rate for the article turned out by the factory. If the factory makes shoes, the railway will reduce its rates on shoes, say, by fifty per cent. The new rate, which has nothing to do with the cost of service, is, of course, open to everybody, but as the chances are that nobody except the one man is prepared to take advantage of it, it amounts to giving him a special rate.

Commodity rates are established for a hundred reasons, none of which has the slightest relation to the cost of the service. It follows that whatever "reasonableness" there may have been in the rates as established by the committees quickly vanishes.

Cost of Service.—Rates do not depend on cost of service. So well understood is this that the courts act on it. The Supreme Court of the United States recently upheld the decision of a lower tribunal which ordered a railway company to run an extra train (and charge reasonable fares thereon) at an admitted net loss of fifteen dollars a day, so as to enable passengers to make connections with another road. The Supreme Court said plainly that the extra train was a public necessity, and that while the company was entitled to earn a profit on its entire system, it was not entitled to earn a profit on every part or every train. In other words, the court said that the company had to run that train even at a loss, but was at liberty to make up for it elsewhere.

Length of Haul.—If rates do not depend on cost per mile, do they depend on the number of miles hauled?

In many cases they do not. It is not difficult to understand this in cases where the roads have to meet water competition. Water transportation costs less than rail transportation. If the rates were based on the cost of service, they would be much lower by water than by rail, and the ships would get all the freight where speed was not important. The roads cannot afford to surrender the business to the ships because, as has been pointed out, they lose less if they do the business at a loss than if they do not

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do it at all. So they meet the ships' prices, charging just a little more because shippers are willing to pay a little more for the greater speed and safety of the rail.

The situation becomes more complicated where one of the points appears to be without water competition. As a matter of fact, however, the absence of water competition is much rarer than most people suppose. For instance, freight rates from New York to points in Nevada, five hundred miles from the sea, are still subject to water competition. Every one can see that the charge for shipping a car-load of flour from New York to San Francisco by rail cannot be very much higher than the charge a ship would make for taking it there around Cape Horn, but many people do not realize that the charge from New York to Elko, Nevada, for instance, is controlled by the amount of the ship's charge from New York to San Francisco plus the rail charge from San Francisco to Elko. Naturally, it seems outrageous to the Elko merchant that he should have to pay more on freight from New York than the San Francisco merchant, who lives five hundred miles farther west. To him such a rate is very unreasonable. To the railway, however, it is not merely reasonable but imperative. The railway asserts that it has not *increased* the rate from New York to Elko, but that it has *reduced* the rate from New York to San Francisco to meet the water competition. This is really the fact, but it is hard to get the Nevada man to believe it.

Again, water competition may depend on the existence of *regular* steamship lines. The Interstate Commerce Commission recently held that it was quite reasonable for the roads to charge fifteen cents (about seven per cent.) more per hundredweight for shipping cottons from Georgia to California than they charged for shipping them from Boston to California (a much greater distance), because New England had the advantage of established lines of water transportation to California and Georgia did not.

From competition with ships to competition with other

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railroads the transition is easy. There are half a dozen railroads that can carry freight from New York to Chicago, but there is only one that can carry it from New York to Mudtown. Naturally, the rates from New York to Mudtown are more per mile than those from New York to Chicago. Once upon a time the rates used often to be not only more *per mile*, but actually more for the whole shorter haul than they were for the longer, but this practice has now been forbidden by law *except where there is water competition to be met*. The roads do still, however, charge more *per mile* between non-competitive points, alleging that higher and more profitable charges between such points are necessary to balance the lower and less profitable charges that they are compelled to make between the competitive points in order to get any of the business between them.

Rates, then, do not depend on length of haul; this, of course, is merely another way of saying that they do not depend on gross cost of service (which is reasonably proportionate to length of haul).

Size of Shipment.—Do rates depend on size of shipments? They used to do so. The man who had ten carloads of goods to ship could always get better rates than one who had only one car-load.

At first this seems reasonable enough. The ancient merchant who used to ship ten camel-loads from Damascus to Jerusalem expected and got better rates than the merchant who shipped only one camel-load. Why should it be different with railroads?

For two reasons: First, railroads are quasi-public; they have been granted special privileges by the people (such as the right to legally condemn a right of way; see page 109), and have no right to use their great powers (which rest on these privileges) to favor one person at the expense of another. Second, any discrimination in favor of the big shipper at the expense of the little shipper is contrary to the public welfare in that it aids the rich to

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become richer and compels the poor to become poorer. It was by just such discrimination that gigantic monopolies like the Standard Oil Company were built up.

This discrimination, which usually took the form of "re-bating" (or returning to the big shipper a part of the rate charged him) is now forbidden by law.

Relative Reasonableness.—Railroad rates, then, cannot be based on cost per mile nor on length of haul, and they are forbidden by law to be based on amount of service.

On what, then, can they be based?

Solely on what the traffic will bear—*provided always that they do substantial justice between man and man and place and place*, and provided, further, that as a whole they are not so high as to result in inordinate profits to the owners of the roads.

The Interstate Commerce Commission, which is charged with enforcing the law that all rates shall be reasonable, never declares that a rate is reasonable or unreasonable in itself (leaving that omniscience to state legislatures), although it does often declare that one rate is unreasonable in comparison with other rates. The commission recently held, for instance, that a rate on wheat of seventy-five cents a hundred pounds from Nebraska to California was unreasonable, because the same road and other roads carried corn between the same points at fifty-five cents a hundred pounds. It cut the rate to sixty-five cents, allowing the extra ten cents because wheat was more valuable than corn and could afford to pay the difference.

Again, certain wholesale merchants of Kansas City recently complained to the Interstate Commerce Commission that the railways were discriminating against them in favor of St. Paul by giving the merchants of the latter lower rates from New York. Such lower rates, of course, enabled the St. Paul wholesalers to lay in stocks of goods more cheaply than the Kansas City men could, and gave them a great advantage in competing for the trade of the retail merchants in the territory lying between the two

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cities. In this particular case the commission held that the lower St. Paul rates were justified by the fact that at St. Paul the railways had to meet water competition, which they did not have to meet at Kansas City. Often, however, no such reason exists, and the railways are required to adjust their rates so as to do justice between the two places—this whether the favors complained of are granted to another town on the same railway system as the town aggrieved or to one on an entirely different system. Thus one railway may be compelled to adjust its rates to those made by a totally different one.

There are hundreds of questions like these, each of which has to be considered on its merits. For instance, unless rates on oranges from California to New York bear a certain definite relation to rates on oranges from Florida to New York, one state will drive the other out of the business. Unless rates on wheat are correctly proportioned to rates on flour, our wheat may be sent abroad to be milled and then brought back to us, thus ruining our millers. Wood and steel are interchangeable for many purposes, and unless the rates on them are correctly proportioned, one or the other industry will suffer. In each of these the rates to be reasonable must do justice to all, no matter how much or how little profit the roads may earn in doing so.

The final proviso, in regard to inordinate profits, is very difficult to discuss. Do the railways as a whole make inordinate profits? Does any particular road make an inordinate profit? These are both obviously questions of fact, and cannot be answered until we know the value of the property on which the profit is to be estimated; and, as already pointed out, opinions differ widely as to what this value may be. To assume a basis would provoke just criticism. Generally speaking, the facts seem to be that the roads do not earn more than they justly should.

Of course, if this is true, it follows that no wholesale reduction (as of passenger fares) will do any good. No road can pocket a loss. What it loses on one shipment or

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on one class of shipments it must make up on others—or go bankrupt, which is a bad thing for everybody.

Assuming, then, what is very probably the fact, that rates as a whole are not inordinate, the only criterion easily applicable in judging the reasonableness of any particular rate seems to be its *relative* reasonableness.

Such a dictum carefully and broadly applied, as it is being applied to-day by the Interstate Commerce Commission, will probably cure in time most of the troubles that still beset the railway situation.

TOPICS

What are some of the principal commodities that are shipped from your neighborhood?

Is there water competition with the railroads?
Is it by direct or indirect routes?

Can you find out anything about the difference in rates between the two systems?

CHAPTER XII

TRUSTS AND MONOPOLIES

Definition.—The word “trust” has changed its significance very greatly since it came into commercial language. Originally, it was applied to an arrangement by which a number of companies engaged in competition handed over their stock to “trustees” to be managed for them as a whole. The companies still kept their separate existences together with any privileges their charters gave them, but the managements were combined and competition ceased. The courts declared that this was a combination in restraint of trade, and therefore illegal, and ordered its dissolution.

It was only the *form* of the combination that the courts had objected to, however, and this was promptly met by changing the form. The “trustees,” from whom the thing had taken its name, were no longer used, an actual union of the competing companies being resorted to instead. A big company was formed to buy up all the little companies, and in a very short time the old result was brought about: competition was destroyed, and the consumer was at the mercy of the trust. The new unions were not “trusts,” for they had no trustees; but the public refused to recognize the distinction, and promptly branded them by the name of their disgraced predecessors.

Nowadays, a trust seems to be an association, formed by the union of formerly competing companies, which is big enough to dominate, or appear to dominate, the particular line of industry in which it is concerned. To be a real trust it must be big; nobody would think of calling a

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small combination a trust. It must be formed by the union or purchase of other companies; a single company or individual, no matter how powerful, has never yet been called a trust. It must control so large a part of the total production in its particular class that the public will credit it with controlling practically all of it.

It does not take so large a percentage of the total to control prices as might be supposed. The Steel Trust, for instance, controls only about sixty per cent. of the total steel production of the country, yet no one disputes its power to fix prices as long as it does not make them too high, because the independent manufacturers will invariably back it up in order to get the benefit of the prices it sets.

Trusts and monopolies are not identical, though many people think they are. All patents are monopolies, but no one dreams of calling them trusts. On the other hand, many of the greatest trusts make no attempts at monopoly; the Steel Trust, for instance, will not let itself absorb more than sixty per cent. of the steel industry of the country.

Origin of Trusts.—Trusts are not necessarily bad things, nor is unrestricted competition always a good thing. When, for any reason, the supply of an article grows too great for the demand, prices must fall, and if this fall does not sufficiently stimulate the demand, production must be reduced. A "trust" can reduce its output with *comparatively* little injury to any one, where a host of small concerns would mutually ruin one another.

It was some such situation as this that gave birth to the "trust" in the first place. Fifteen or twenty years ago there came a period of depression, and the country found that it was producing more of this and of that than it needed. No factory wanted to go to the wall, and each fought for its life, selling its product so low that it made no profit at all. This sort of thing lasted for a year or two, and the manufacturers got very tired. They tried

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various schemes for limiting production and giving each a living chance, but none of them succeeded. Finally some genius carried through a scheme by which perhaps two-thirds of the factories in some industry united in one big company, in which each received a share proportioned to its importance.

The big company promptly closed down the factories where, for one reason or another, the work was most expensive and the product least valuable, and concentrated on the factories where these conditions were reversed. Half a dozen big factories, it was found, could do the same amount of work at less cost than a dozen little factories. And, anyhow, one object of the combination was to reduce production. The shutting down of the poorer factories was not tyrannous, nor criminal, nor anything of that sort; it was merely a throwing overboard of a load that would have wrecked the entire industry.

This was the beginning of the "trust" movement, but it was not the end by any means. The lessening of production, of course, raised prices, but it did not raise them as much as the owners of the big company thought they ought to be raised. The independent companies — those that had refused to join in the combination — were also reaping the benefit of the increase in prices without having done anything to bring it about.

It was not in human nature to stand this. The trust set out to force the independent companies to join the combination or to suffer ruin. By one means or another it accomplished its purpose. Prices were cut far below cost to the customers of the independents, and kept below it until the independents came to terms. The trusts, having so much greater wealth, could keep on losing money much longer than small companies.

When at last the trust had full control, it set out to get even for its losses. Prices went soaring. Money rolled in. The public said unpleasant things of the trust, but the trust only smiled.

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It did not smile long. The high prices attracted capital to the field. New rivals sprang up more numerous than those it had destroyed.

Again the trust set itself to the work of destruction. In some cases it succeeded and in others it failed; in either event the result was the same. The moment it lifted prices beyond a certain figure fresh competition sprang up that had to be bought off or beaten off—both of them costly operations. Finally, the trust either went to pieces or contented itself with asking only a fair price.

When it reached this point, it turned out to be not such a bad thing, after all. Working on a much larger scale than any of the small competitors, it found that it could carry out economies of production that none of the others could touch; and that it could make good profits at prices that afforded barely a living to the others. In other words, it had lessened waste and brought about a desirable economy in production.

It was noticed, however, that with a few trusts things turned out differently, and by-and-by the reason was discovered. They were all trusts that controlled the sources of supply.

Good and Bad Trusts.—It is customary to speak of good trusts and bad trusts, but it would be much better to speak of dangerous trusts and harmless trusts. It is almost impossible to speak of a trust as good or bad without producing the impression in our minds, no less than in those of others, that we mean that it is fairly or wickedly administered. As a matter of fact, the goodness or badness of a trust is a thing entirely apart from its management. The most dangerous trust may be, and not seldom is, administered with scrupulous regard for the rights both of its competitors and of the public, while the least dangerous may be conducted, for a time at least, with outrageous disregard for both. The difference between them runs far deeper than any mere temporary question of management

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which may exist to-day and be reversed to-morrow. Trusts that can never be anything else but dangerous are those that control, or are in a position to control, the source of supply of any of the important raw materials of the world; and trusts that are harmless (or only temporarily dangerous) are those that can control at the utmost only some line of production or manufacture. The first must always be dangerous because they do, or can, crush all competition. The second cannot be permanently bad, no matter how hard they may try, because they cannot possibly permanently crush competition, and because the moment they get really bad they bring about their own ruin.

A hat trust, for instance, could never be a permanently dangerous one; it might ruthlessly crush its competitors, but the moment it tried to put up prices to pay itself back for the costs of its war, fresh competition would spring up which would have to be crushed or bought up at heavy expense. There is no possible way of controlling the raw material of hats.

So also with farmers' trusts. When they succeed in restricting acreage or in holding back crops until prices are forced high enough to give them great profits, their very success incites both themselves and others to grow enormous crops the next year, and enormous crops inevitably result in inordinately *low* prices, probably for several years to come. When prizes are hung out men *will* strive for them, and no farmers' trust has ever been able to *sustain* prices even for a time unless (as in the Kentucky and Tennessee tobacco district) it resorts to murder and arson to restrict the crop.

Every trust, agricultural or industrial, based on an article with unlimited possibilities of production or manufacture, commits suicide as soon as it tries to take advantage of the monopoly it has been fighting to gain. Its victory not only proves barren, but usually turns out to be a boomerang. So unprofitable have such trusts turned out to be that there is scant encouragement to others to imitate them. It fol-

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lows that such trusts *cannot* be a permanent evil, no matter how hard they may try to be.

Far otherwise is it with the other class of trusts—those that do, or can, aim at the *monopoly* of an important raw material.

Limits of Natural Resources.—Most people forget that the world's supply of good things is limited. Coal, and gold, and iron, and oil, and marble, and so on, widespread as they may seem, yet do not occur everywhere. Heretofore there have always been unexplored regions brimful of possibilities, where fresh deposits could be found as the old deposits were exhausted; particularly has this been true in the United States, with its wilderness of unsettled mountains and plains. The end of this, however, is in sight (see pages 236-243).

Take coal, for instance. Probably all the deposits in the United States are now known. It is not probable that any very large and valuable deposits remain hidden, and it is almost impossible that any important source of anthracite coal is still unknown. The "visible" supply, though, of course, still enormous, is yet limited and may be monopolized. When the coal is exhausted the country must rely on water-power for its motive force. If the sources of this have passed into the private ownership of a few men, a very grinding monopoly will have been established. Iron, oil, gas, and other articles are limited (see pages 238-239), and may be monopolized.

Nor must the element of distance be forgotten. Great stores of coal or iron or oil might be found in the heart of Africa, for instance, without lessening the control of the possible United States trust, because the cost of bringing coal from Africa must always be very great.

Once monopolized, the owners of such natural resources could exact what they liked. For with all the sources of supply in the hands of a trust, no competitors *could* arise to restrain them. Such trusts, therefore, are terribly dangerous. The line of distinction between dangerous

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and innocuous trusts is sharp, but it is easily passed. The Steel Trust, for instance, is harmless as long as it confines its control to producing steel, but it will become dangerous the moment it gets into a position where it can control the iron-mines of the country.

To become dangerous, it is not necessary that a trust should actually monopolize the production of a raw material; the possession of the power to do it is enough. The Coal Trust, for instance, might be managed for years with scrupulous regard for the rights of the public and for those of its competitors, and then might pass into the control of some one who would take the other tack. It is the *possession* of the power to oppress and not the actual exercise of that power that is dangerous.

A form of trust, which, while perhaps not permanently dangerous, is very oppressive, is that whereby certain firms attempt, by exclusive contracts with retailers and by threats of non-dealing except upon such contracts, to use the largeness of their resources and the extent of their output compared with the total output as a means of compelling custom and frightening off competition. This form of trust, which has been especially exercised in regard to particular brands of foods and other articles of common use, is a violation of the law if done on an interstate scale.

National Control.—The United States government has no power to restrain a corporation, no matter how iniquitous, if its operations are confined to a single state; any restraint of such corporations is exclusively an affair for the state. It is only when a corporation interferes with *interstate* commerce that it comes under national authority.

Railroads were the first corporations whose control over interstate commerce was recognized to be a source of danger to the country; and Congress, in 1887, adopted an "interstate commerce act" designed to stop some of the abuses they were practising. Later it became evident that corporations other than railroads had so extended them-

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selves that the states were no longer able to control them, and that their operations were becoming very dangerous to the people. Congress, therefore, in 1890, adopted the "Sherman anti-trust" act, which declared that any contract, combination, or conspiracy in restraint of interstate trade was illegal, and provided means for preventing or punishing such. The law left it to the courts to decide just what sort of contract, combination, or conspiracy *was* in restraint of interstate trade, and the courts have ever since been working away on that question.

The Fifth United States Circuit Court recently said:

"The test of the legality of a contract or combination under this act is its direct and necessary effect upon competition in interstate or international commerce.

"If the necessary effect of a contract, combination, or conspiracy is to stifle, or directly and substantially to restrict, free competition in commerce among the states or with foreign nations, it is a contract, combination, or conspiracy in restraint of that trade and it violates this law.

"The parties to it are presumed to intend the inevitable result of their acts, and neither their actual intent nor the reasonableness of the restraint imposed may withdraw it from the denunciation of the statute.

"The exchange of the stock . . . of competitive corporations engaged in interstate commerce for the stock . . . of a single corporation, the necessary effect of which is a direct and substantial restriction of competition in that commerce, constitutes a combination in restraint of commerce . . . that is declared illegal by this law."

In accordance with these rules, the Supreme Court has declared that the law forbids: the union of two competing railroads under one control; the formation of joint traffic managements between several railroads; and the combination of private manufacturers to control prices and suppress competition.

Reasonable Combinations.—In the Supreme Court decision dissolving the Standard Oil Company, delivered

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May 15, 1911, the opinion was given that the Sherman anti-trust law was intended to operate only as against "every contract, combination, etc., in restraint of trade" which seemed unreasonable. This leaves it to the judgment of the courts to permit corporations in restraint of trade to continue in business, provided neither the means of securing such restraint nor the conduct of their monopoly is unreasonable or harmful.

Water-Powers.—The question of water-powers is attracting much attention. They have always been held to belong to the riparian owners — owners of the adjacent lands. If these owners really own the power they can sell it, and if they can sell it, there seems to be no reason why a "trust" should not buy it, and in time monopolize it by electrically transmitting the power they can develop.

Here, however, the government steps in, basing its right to intervene on the well-established legal principle that since water-powers derive almost their entire value from the people as a whole, they must be managed with due regard to the welfare of the people.

TOPICS

What recent consolidation of companies in your own locality can you mention? Should you call any of these "trusts"?

Can you mention any independent companies that are fighting "trusts"?

What are the advantages of "trusts" to the general public?

Should "trusts" be legislated out of existence, regulated and restricted as far as possible, or do you think they will find that their own greatest gains will come from a lowering of prices and so regulate themselves?

What "trusts" have you heard accused of raising prices? Have you heard of any that lowered them?

CHAPTER XIII.

POST-OFFICES AND POST-ROADS

Authority of Congress.—The Constitution authorizes Congress to establish a post-office. This, of course, carries also the right to establish a parcels post or national "express" system, but Congress has never cared to exert its power to this extent, in this differing from most other countries of the world. The Constitution does not give any authority over telegraphs, for the sufficient reason that no such thing was in existence when the Constitution was drawn. Congress, however, could probably follow the example of the rest of the world and make the telegraph an adjunct of the post-office if it wanted to do so.

The post-office has always been considered a matter for the national government. The Continental Congress established one only a day or two after adopting the Declaration of Independence, and both the latter forms of government continued it. No good reason can be advanced why its functions should not be extended to express matter and to telegrams that cannot be also urged against its control of ordinary mail matter. The usual objection—that it would involve the employment of a vast number of employees—applies very strikingly to the post-office, which has grown from a modest establishment with only a hundred officers, costing only \$32,140 in 1790, to an enormous business with 130,000 employees, costing \$208,000,000 in 1908. The claim that letters are peculiarly sacred and should not be subject to private control is, of course, true, but it is also true that telegrams are, or should be, equally

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sacred. Express matter, on the other hand, is, of course, not sacred, but neither are newspapers nor small merchandise packages which are carried by the mails to-day. No material damage would be worked to the country by increasing the present weight limit of the post-office from four pounds to eleven pounds (as it is now in foreign mails), or to one hundred and eleven pounds, or even more.

The real reason why things are as they are is that they were started that way, and have gradually developed to their present condition. So many private interests would be injured by a change, and there is so little certainty that the public interest would be benefited, that for years to come matters will probably drift along about as they are.

Rates and Control. — Printed matter is carried very cheaply by all governments—for one cent a pound by the United States government. Efforts have often been made to increase this rate, on the ground that the cost to the government is much higher—eight cents a pound was the latest estimate. On the other hand, it is argued that every newspaper and magazine gives direct rise (by its advertisements) to an enormous amount of mail business—correspondence, money-orders, registered mail, etc.—which more than balances any loss in the direct payment.

Some matter is notailable. Congress has declared that neither indecent, obscene, and fraudulent matter, nor articles that are from their nature likely to damage other mail, nor packages that exceed certain dimensions or weight, shall be carried. The Postmaster-General is empowered to withhold and return to the senders any mail addressed to a lottery company or to *anybody* whose business *he has found to be fraudulent*. This is a very great power to put in the hands of one man; ordinarily such functions are reserved to the courts.

Congress also has power to establish "post-roads," and it has twice exercised this power—notably in 1806, when it directed the building of the Cumberland Road from the Potomac to the Ohio through Cumberland Gap. It has

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been suggested that under this authority Congress might build and acquire railroads, but so far it has never attempted to do so.

TOPICS

Why are books and periodicals not classed as merchandise and carried at the same rate?

Why has it been proposed to increase the rate for periodicals?

Private companies manage our railroads, express, and telegraph lines. Would it be possible or advisable for them to carry the mails?

If the government carried all first-class mail, what objection would there be to turning over the other classes to the express companies? What advantages?

Are express companies generally thought to make a great deal of money?

Why do the heads of express companies oppose the establishment of a parcels post by the government?

CHAPTER XIV

BANKRUPTCY

It is somewhat surprising that the makers of the Constitution, who were so careful not to grant to the national government any powers that did not seem absolutely essential, should have unanimously conferred upon it authority to make a bankruptcy law. They did so, however, although they might very well have reserved it to the states.

In consequence of this grant the national government has control of *bankruptcy*, while the states may regulate only *insolvency*. Popularly, bankruptcy and insolvency mean the same thing, but legally they differ. *Insolvency* laws are laws prescribing methods by which creditors can proceed against debtors, either to collect what is owing or to punish those unable to pay. *Bankruptcy* laws are laws by which a debtor can be released from his debts or from his contracts and permitted to make a fresh start in the world. *Insolvency* laws cannot do this; and if any state adopts a law that tries to do it, the law is unconstitutional and void.

The present United States bankruptcy law was adopted in 1898. Under its provisions a debtor may become a "voluntary" bankrupt by petition addressed to the United States district court; or an "involuntary" bankrupt on petition of his creditors. In either case he must surrender practically all his property to an assignee for equitable distribution among his creditors. Having done this, the court will "discharge" him from his debts and enable him to resume business. Without such discharge he would

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probably be crushed beneath the burden. This legal release, however, is not a moral release, and many bankrupts have afterward paid all their debts in full.

TOPICS

Why did the Federal government take control of bankruptcy?

Find out whether there are any serious evils connected with our present bankruptcy laws.

At the present time, may the states enact bankruptcy laws? Have they ever done so?

PART IV.—LEGISLATIVE POWER OVER WAR

CHAPTER XV

WARS AND REBELLIONS

Declarations of War.—The power to declare war belongs to even the weakest government. The Revolutionary government exercised it without any grant; the Confederation government was entitled to exercise it; and it was placed in the hands of the United States government without question.

It was placed, too, in the hands of the legislative branch—in those of Congress—and not in those of the President nor of the Senate. The House has nothing to do with making peace. The President, with the consent of the Senate, has entire control of that; but it takes the whole Congress to declare war. A declaration of war must be adopted in the same way as any other resolution of Congress, and may be vetoed by the President.¹

War may exist without a formal declaration. Congress declared war against Great Britain in 1812 and against Spain in 1898, and declared that war already existed with Mexico in 1846, but such a practice is not universal or obligatory abroad. No formal declaration of war was made between Russia and Japan in their recent conflict.

Armies and Navies.—The power to declare war does not necessarily carry with it the power to raise forces to *carry* on war. The Confederation government, for in-

¹ In Great Britain, as in most monarchical countries, war is declared by the King and not by Parliament.

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stance, had no power to raise an army; all it could do was to call on the several states to furnish their quotas of troops for use in war. Congress, however, is expressly granted the right to raise armies, to provide a navy, and to call out and control the militia of the states.

Armies may be used for other ends than war, however; in all ages of the world they have been utilized by governments for purposes of oppression. The makers of the Constitution were resolved that nothing of the sort should occur in the United States, and as a precaution against it they put in the Constitution a clause providing that no appropriation for an army should continue for more than two years. At the end of that time a fresh appropriation must be made or the army must fall to pieces for lack of support.

Intervention in States.—The Constitution provides that the United States shall protect each of the states against invasion, and protect any particular state, at its own request, against domestic violence. The request of the state is to be made by its legislature, or, if the legislature is not in session, by its Governor. If the state fails to ask help, the United States may still intervene if interstate commerce or United States mails are obstructed (as it did during the Chicago railway riots of 1894); and, indeed, it is very probable that it may intervene even if there is no such obstruction if in its opinion the necessities of the case require it to do so. No need for such action, however, has yet arisen.

On the other hand, the United States is not compelled to intervene whenever it is requested. In 1908 a request of the Governor of Nevada for army help to prevent threatened disorder was refused by President Roosevelt on the ground that Nevada had made no effort to protect herself, and that, in any event, the situation did not require it.

Although the national government has been very chary of using the army to suppress domestic troubles, the people have never ceased to be jealous of it, and have per-

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sistently kept it down to the lowest possible limit. For years before the Spanish War in 1898 the army only numbered about twenty-five thousand men, and even to-day it is only sixty-five thousand. A good deal of hostility against the navy existed in early days (probably owing to memories of the work of British press-gangs); this disappeared later and has not reappeared.

Militia and Volunteers.—The United States relies for its defence on militia and on volunteers. These are not the same thing. Militia must be furnished by the states when called upon, and can be “drafted” and compelled to serve. Volunteers are what the name implies; the states are not *required* to furnish them; they are *permitted* to do so. The *militia* has been called out only three times in the history of the country—to suppress the “Whiskey Rebellion” in 1794, to repel invasion in the War of 1812, and (to the number of four hundred and seventy-five thousand) in the Civil War. All the soldiers in the wars with Mexico (1846) and Spain (1898) and more than two million of those in the Civil War were volunteers.

When mustered into the United States service the militia are wholly under the control of Congress, except that to the states is reserved the appointment of the officers of their own regiments. No such reservation exists in the case of volunteers, though it is customarily allowed, subject to national supervision.

The Constitution gives Congress power to issue “letters of marque”—that is, to commission privateers—but since the War of 1812 the power has not been exercised and probably never again will be. Practically the whole world has abandoned this method of fighting.

Rebellions.—Military operations are frequently undertaken without any formal declaration of war, and, indeed, without any formal waging of war. Suppressing a riot or a rebellion is not war, unless the rebels make such head against the government as to make their final success likely or at least to compel the government to treat them as

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“enemies” rather than as rebels. There is no formal rule in the matter; the Philippine insurrection was never classed as a war, although it took the United States two years and forty thousand men to suppress it; the “rebellion” of the Confederate States, on the other hand, was so classed.

Even where no rebellion is involved, important military operations may not be war. The sending of troops by the United States and other powers to China to rescue the diplomats besieged in Peking by the Boxers was not considered war. Quite frequently European powers have seized South-American ports and exacted reparation for real or fancied wrongs without the acts being considered war.

TOPICS

If Congress declares war, why should not Congress make peace?

Why does the Constitution provide that no appropriation for an army shall continue for more than two years?

How does our army compare in size and efficiency with those of other nations? Our navy?

What military organizations do you know about in your neighborhood?

PART V.—LEGISLATIVE POWER OVER LANDS

CHAPTER XVI

GOVERNMENT

CONGRESS has power to “make” all useful rules and regulations respecting the “territory” or other property of the United States, “territory” being, of course, understood in its broad sense of “lands.” Congress may use this power in two ways: (1) it may make laws for the *government* of any territory it possesses; and (2) it may, like any private owner, retain its property or part with it under such restrictions as seem good to it.

Under its “governing authority” over its territory, Congress has organized and administered territorial and colonial governments over lands, most of which have finally been admitted as new states—power to admit such having been specifically granted by the Constitution. The United States was a colonial power before the adoption of the Constitution, and has never ceased to be so in all its history.

Territories.—As long ago as 1784 the United States, then operating under the Articles of Confederation, accepted from the states the vast Northwest Territory, and made laws for its colonization and organization. These laws were amplified in 1785 and two years later were embodied in the “Ordinance of 1787,” which served as a basis for its colonial (or territorial) system for more than a hundred years.

The ordinance of 1787, besides assuring to the settlers personal rights, such as *habeas corpus*, trial by jury, etc.,

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provided for a form of government consisting of a Governor and three judges appointed by Congress. This form was to continue till the population numbered five thousand, and was then to give way to a legislature partly elected by the people and partly named by Congress; later, when any particular part of the territory had sixty thousand inhabitants, it was to become a state on an equality with the rest. When the Constitution was adopted, the new Congress passed a "confirmatory act," ratifying the ordinance of 1787 and giving the Executive (President) all the powers that the ordinance had given to Congress (there was no Executive under the Articles of Confederation).

Changes made in this basic act have been in the direction of greater liberalization. From time to time the territory of the United States has been cut up into smaller and smaller "territories," and one by one these subdivisions have crystallized into states. Four¹—Arizona, New Mexico, Alaska, and Hawaii—now remain. The President appoints in each a governor, administrative officers, and judges for four years; and a legislature is elected by the qualified voters.

The old figure of sixty thousand people required in order to enable a territory to become a state has been long ago disregarded. Nevada was admitted with only forty thousand, and New Mexico has so far been excluded, though it has two hundred thousand.

The effect of a new state on the political balance of the Union as a whole has always played a great part in the admission of new states. Up to the verge of the Civil War two states—one Northern and one Southern—were always admitted at once, so that their balance in the Senate might be preserved, since the ever-increasing preponderance of the North in the House of Representatives was regarded as a possible menace to slavery. Even of late years the political persuasion of certain territories has had much

¹ With the constitutions of Arizona and New Mexico now (May, 1911) before Congress for approval, there is little doubt that within a very short time they will become states.

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to do with their admittance or exclusion, although the objections have usually been ostensibly based on the character of their population rather than on the real reason.

New States.—A territory may become a state in one of two ways: it adopts a constitution and asks Congress to approve it, or it secures from Congress an *enabling act* authorizing it to form a constitution, and authorizing the President to admit it by proclamation when he is satisfied that the provisions of the act have been observed. (See further, pages 130, 250.) Congress has at times required a particular territory to place certain provisions in its Constitution (for instance, it required Utah to forever forbid polygamy), but it is doubtful whether such restrictions are really binding on the state after it has been admitted.

Colonies.—The annexation of Hawaii brought about no important change in the territorial system of the United States, the people of the island being about as truly "American" as those of many Western states; but the acquisition of Porto Rico and the Philippines led to a radical revision.

Immediately on the acquisition of these islands a great deal of heated discussion occurred as to their status—as to whether the Constitution "followed" the flag and whether the islands instantly became part of the United States. It took several decisions by the Supreme Court to determine the facts in the matter.

Yet the facts were obvious, and have now been made a matter of judicial record. The Constitution follows the flag in that Congress and the President are required to observe its principles in making "rules and regulations" concerning the "territory and other property" of the United States; but this does not mean that that "territory and other property" is necessarily *part* of the country, and entitled to all its rights and privileges. Its treatment is wholly in the hands of Congress, but Congress must be guided in that treatment by the principles of the Constitution. If Congress fails to act, it is the duty of the Presi-

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dent, as Executive, to make necessary rules and regulations to preserve the property until Congress *does* act, and to enforce these, if necessary, by means of the army and navy.

This is so obviously the correct way of looking at the matter that it is surprising that there should have been any question about it. And it is not only correct; it is also the best, if not the only, practicable way.

As they have worked out, the advantages of this condition, both to the islands and to the United States, are numerous. For one thing, the commercial relations are much simplified. If the Philippines were part of the United States, customs tariffs and internal revenue duties there and here would have to be "uniform"; as it is, the Philippines can have their own taxation laws suited to their needs; Congress can give them the advantages of the United States tariff, and free them from its disadvantages. Their status with respect to the United States is much the same as that of Canada to Great Britain; preferential agreements with other countries can be made for them if such shall be found beneficial either to them or to the United States. Again, if the United States ever decides to grant them their independence or to part with them otherwise, it can do so without dismembering itself, just as a man can sell or give away his house or farm without cutting off one of his own limbs.

Finally, each island can be legislated for according to its peculiar needs and is freed from the automatic application of United States laws, which, being made for a different people living under very different conditions, are naturally unsuited to it.

Porto Rico, being comparatively small and near at hand, and being populated chiefly by a European race, has been easy to legislate for. It has been made a customs district of the United States, subjected to the United States tariff laws, and granted free trade with the rest of the country; under this plan its commerce with the United States has grown from \$2,685,000 in 1891 to \$25,686,000 in 1907.

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It is administered by a Governor and the usual officers, appointed by the President and confirmed by the Senate. All but the Governor and one or two others are natives of the island. It has a legislature of two houses—one elected by the people and the other appointed by the President. It sends a "commissioner" to Congress, who has all the powers of a representative except the right to vote.

The *Philippines* have been handled differently. The natives there have no common language, there being thirty or more native tongues, and Spanish being known to only about five per cent. of the population; this interferes greatly with any plans for granting self-rule. Economic difficulties prevent the islands from being included in the customs and coastwise lines of the United States. Congress, however, has done what it could. Practically, it has given the natives control of the municipalities and of the various provinces, this last being accomplished by giving the municipal councils the authority to elect the provincial Governors and the members of their staffs, with the single exception of the treasurers, who are appointed by the Governor-General. It has also constituted what amounts to the lower house of a legislature, the members of which are elected by the people. The upper house still consists of the Philippine Commission, whose members are appointed by the President, and the Governor-General still exercises the veto power. Two commissioners are sent from the Philippines to Congress, but they have no votes. The next step will be to give the natives full powers of local self-government, such as our home territories have. This, however, will be given only when the members of the lower house demonstrate by the conservative and judicious character of their legislation that the Philippine people have become proficient in the exercise of the responsibility conferred upon them. The whole matter rests in the hands of Congress.

Commercially, Congress, by the tariff act of 1909, placed the Philippines on what is practically a free-trade basis

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with the United States. Generally speaking, all United States products may be imported into the Philippines free of duty, and all Philippine products, except rice, sugar, and tobacco, may be imported into the United States free of duty. Duties are imposed on all rice, on all sugar over and above three hundred thousand tons imported in any one year, and on all tobacco over and above three hundred thousand pounds of "wrapper" and one million pounds of "filler." Before this act went into effect the trade with the islands had increased from \$504,000 in 1899 to \$8,661,000 in 1907, and the new act is expected to cause further increase.



TOPICS

What were the boundaries of the United States in 1783?

Outline its territorial growth with dates from that time to the present.

What has been the history of your own state in this direction?

Why are rice, sugar, and tobacco not admitted from the Philippines as freely as other products?

What other products do the Philippines send to us?

What products come from Porto Rico?

CHAPTER XVII

OWNERSHIP

THE power of Congress over the public lands of the United States is much like that of a private owner. It may retain them indefinitely, sell them outright, or sell them under restrictions. Which course it will adopt as to any particular piece of land is a matter of policy, not of power.

Being a matter of policy, its method of dealing with public lands has naturally altered from time to time. In early years the government had far more land, both agricultural and mineral, than it needed; it wanted settlers to build up its farms and miners to find and develop its mineral resources.

Farming Lands.—For years Congress was only too glad to give away farming lands to any one who would live on them. It made enormous grants to practically any one who would open up the country by building roads and railroads; it paid army salaries in lands; it encouraged schools by grants of land, etc. Later, when most of the well-watered, fertile lands were gone, it sought to get settlers for the poorer lands by means of liberal "timber-culture" laws, etc. Finally, in 1902, it set out to improve as much as possible of its remaining lands by means of vast "reclamation" projects designed to supply water for the irrigation of arid areas. Thus, from trying to get settlers to occupy its abundant lands, the government is now seeking to get lands for its abundant settlers to occupy.

Water - Supply.—The value of the remaining public

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lands of the United States depends on their water-supply. English law and early United States law looked on the land as the main thing and on the water-supply as merely incidental. In the arid West, however, water is the main thing and land is incidental. It took a long time for the law to shift its point of view so as to recognize this fact, but it has done so at last.

Water is the one essential, and it must be "conserved." Accordingly the government is building mighty reservoirs in which to save the spring floods for use in the dry summers; it is preserving and creating forests which *may* increase rainfall and which certainly *will* hold back floods, and enable the streams to keep on flowing instead of drying up in the hot weather; and it is doing its best to prevent "water rights" from getting into the hands of monopolies which might use them to extort the last cent from the settlers who must rely on them.

It is doing all this by right of various powers. It preserves the water for its reservoirs by "appropriating" it. In accordance with the new water laws of most of the Western states, if a settler formally "appropriates" the waters of a stream "to beneficial use," he cannot be deprived of them by a later settler who seeks to divert and use the water *higher up* the stream. Accordingly, when the government is to build a new reservoir, the first step is for the owners of the lands which will benefit (including the government itself, as owner of any public lands involved) to form a "water-users' association," which will "appropriate" or buy up all the water rights necessary.

It seeks to maintain the flow of the streams by preventing the destruction of the forests in which they head. It has many national forests, situated either on land with which it has never parted or on lands which it has bought back from those to whom it sold them. By its power of "eminent domain" (see pages 108-109) it can force any reluctant owners to surrender such lands, and can then

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make regulations for the preservation and control of the forests on them.

It tries to prevent monopolization of water by its power to regulate interstate commerce. No person can build a bridge or a dam (the latter being almost invariably necessary for any power plant or canal diversion) across a navigable river without the consent of Congress, because to do so would be an obstruction of interstate commerce. The United States, therefore, can exercise a potent control over the larger rivers of the country, and to some degree prevent their monopolization by great corporations.

The subject is still new and is not yet fully understood. Consequently, the government will hardly be able to avoid making mistakes for some years to come in dealing with it. A fixed policy, however, will undoubtedly be worked out sooner or later.

Mineral Lands.—Congress has always freely granted mineral lands to those who would develop them. Special laws were early made in regard to deposits of gold and silver, but for a very long time none of importance were enacted in regard to deposits of iron, copper, coal, etc. No real distinction between farming lands and lands containing these minerals was made. The minerals went with the land, and the government neither knew nor cared whether it was parting with a tract valuable only for farming or with one in which the minerals were a thousand times as valuable as the crops. Later laws were passed designed to save mineral lands, but it is only since the beginning of the present century that Congress has really attempted to get a fair price for minerals it parts with. Coal and iron lands are now being examined and "classified" by the Geological Survey, and priced in accordance with their value.

Conservation.—Congress has enacted various laws for the protection of its forests from destruction. It has done this both to preserve streams that flow out of them from floods on the one hand and from droughts on the

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other, and also to preserve the timber-supply of the country. Properly handled, a forest will for all time to come yield a constant crop of mature wood; improperly handled, it can be utterly destroyed in a few years by modern logging methods. The United States regularly sells the mature timber in its forests, requiring only that it shall be cut in a manner which experience has shown to be least harmful to the rest of the forest.

But though Congress has taken steps to save its forests, so far it has taken none of importance to prevent waste in the exploitation of its mineral resources. In the *territories* it has power to provide that all mines shall be worked in such a manner as to prevent undue waste, etc.; such legislation, however, would be subject to review by the courts if it was alleged to be oppressive or so costly as to amount to confiscation. Congress, however, has never fully exerted this power.

In the *states* the United States government has at present no power over mining. It could, however, very easily provide that all mineral lands sold by it *hereafter* should be worked only in such and such a manner—a manner that would prevent undue waste. But it has not yet laid down any such restrictions.

(For further discussion of waste and its prevention, especially as it affects the individual states, see pages 240-241.)

Eminent Domain.—Congress may take private property *for public use* on making payment therefor. Cases may obviously arise when private rights must yield to public welfare. A single owner, for instance, cannot be permitted to prevent the cutting of a street or the building of a road. If he will not yield his right the government may take possession of the property on paying him a just price—a price determined by a jury of his fellow-citizens. This power of the government is known as the right of “*eminent domain*.”

The right extends over all sorts of property—real estate,

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personalty, franchises, rights, etc. In time of war it may be exercised arbitrarily, and the owners referred to the courts for compensation.

Not only can a government itself exercise this power, but it can authorize others (railroad companies, for instance) to exercise it *for public use*. Whether or not a use is public is determined by the courts, but the wisdom of exercising the right is a matter for Congress.

Public uses have been declared by the courts to include roads, railroads, canals, streets, parks, waterworks, gas-pipe lines, and drainage channels. They do not include cemeteries. In France, Italy, Switzerland, and elsewhere, water-powers of more than a certain magnitude have been declared public uses, subject to public regulation. Probably the United States will follow this example sooner or later.

TOPICS

What was the population and area of the United States in 1776? What at the last census? What difference in the proportion of the population to the land?

What are the agricultural states, and where are gold, silver, copper, iron, coal, etc., found?

In what states are water laws most needed?

PART VI.—LEGISLATIVE POWER OVER PERSONS

CHAPTER XVIII

ALIENS

Immigration.—The enormous immigration to the United States during the last hundred years has been both a great gain and a very real peril to the country. Without it we should still be a few insignificant states strung along a coast backed by a continent inhabited by Indians. With it we have undergone a marked change in our blood, in our customs, in our mode of thought.

Fifty years ago our population was about twenty-five million; since then twenty-five million immigrants have come to our shores; the other forty million or so of our present population is due to natural increase. Nearly half our people to-day, then, are either immigrants or the descendants of immigrants of fifty years' standing. That we have been able to absorb this vast influx, and to imbue it with what we may call the "American spirit," is one of the wonders of the world.

The immigrants who have come to us have, of course, been of all sorts. They have included weaklings and criminals, just as they have found weaklings and criminals among those who were here before them but, taken as a whole, they have stood shoulder to shoulder with the sons of the pioneers, and have made this country what it is and will be.

This is not to say that the United States ought to stick to its old methods in regard to immigration. Conditions have changed. The millions of acres of vacant land that once cried for settlers have nearly vanished. Our own natural increase will supply most of our labor needs in the

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future, and we can afford to pick and choose among applicants instead of being glad to hire anybody that offers.

And we are picking and choosing nowadays. We are putting a premium on American residence, and are insisting that those who come to us shall give promise of making useful citizens. Congress has full power over immigration, and year by year is making stricter laws and establishing stricter requirements. It now requires, among other things, that immigrants shall have no contagious diseases; shall not be insane or idiotic; shall be able to care for themselves or have some relative already here who will stand ready to care for them; shall have enough money to live on for at least a few days; shall not be anarchists or convicts or polygamists; and shall not come "under contract" to do some particular work. Those who fail to meet these requirements are "deported."

Naturalization.—The principal means by which we have converted these millions of foreigners into Americans has been by putting responsibility on them. We have made them citizens—have invited them to unite with us and to help us govern the country. We have impressed it on them that this is to be *their* country as well as ours. Some people think we have been too liberal in doing this, but the very fact that we have done it has induced the immigrants, as nothing else could or would, to fit themselves for the privileges offered. In point of fact, we have made them citizens not for their sakes, but for our own. Of course, there have been thousands of cases where this plan has worked badly, but there have been millions of others where it has worked well. The proofs are found in the condition of the country to-day.

Naturalization is the act of changing a foreigner into a citizen. People born in the country do not need to be naturalized; they are citizens by the mere fact of their birth. Immigrants or aliens, however, must go through a certain routine prescribed by Congress before they can become citizens.

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Generally speaking, an alien must make a formal declaration in a court of record (state or national) that it is his intention to apply for naturalization. Then, not less than two years nor more than seven years later, he must apply to the court with witnesses to prove that he has been living in the United States for at least five years and in the state for one year; must swear "allegiance" to the United States and "renounce" allegiance to his former government; must be able to speak English; must be of good moral character; and must not be an anarchist.

Unmarried women may be naturalized in the same way as men; married women take the status of their husbands. Minor children become citizens when their parents do. Negroes may be naturalized just as whites may, but neither Chinese nor Japanese may be. But children born in the United States to Chinese or Japanese parents are native citizens. Citizens of Hawaii are citizens of the United States, but citizens of Porto Rico and the Philippines, though entitled to the full protection of the United States, are *not* citizens of the United States, but of their respective countries. *Naturalized* citizens who return to their old homes and live there for two years are considered to have abandoned their American citizenship and may no longer claim American protection. An American woman who marries a foreigner loses her American citizenship.

These are the ordinary rules for naturalization. Congress, however, has naturalized whole communities off-hand—the people of Texas, for instance.

Political Rights.—In non-political matters most states make little or no difference between citizens and aliens (although a few of them do not permit aliens to own real estate), so that in such matters naturalization gives few additional privileges. In political matters, however, it gives the right to vote and to hold office, and, generally speaking, to help to "run things." In some states even the *preliminaries* to naturalization confer privileges; thus

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Alabama, Arkansas, Indiana, Kansas, Missouri, Nebraska, Oregon, South Dakota, Texas, and Wisconsin all grant the right to vote to aliens who have declared their intention to become citizens. As the right to vote for the lower house of a state legislature carries with it the right to vote for national officers (see page 139), aliens in these states who have been in the United States for only two years may vote for members of Congress and for presidential electors, and may themselves be elected or appointed to any office, national or state, except a few which the law expressly says shall be filled by citizens only. Such generosity seems to be a little too exuberant.

Banishment.—The “Alien” act, adopted in 1798, gave the President power to expel from the country foreigners suspected of plotting against the government. The law expired by limitation in two years, and has never been renewed. “Deportation” of foreigners, however, is common. (See page 111.)

TOPICS

What are the arguments for requiring a long residence before granting naturalization, and why are some people always trying to have the time shortened?

Must a foreigner be naturalized before he can vote?

Who determines the regulations for naturalization? Who determines the qualifications a voter must have?

Could naturalization laws have been left to the separate states?

For what reasons may an unmarried woman need or wish to be naturalized?

If an American woman marries an unnaturalized foreigner, is there any reason why she should wish to keep or to regain her American citizenship? Is there any way by which she may accomplish this?

CHAPTER XIX

PUNISHMENTS

IN the infliction of punishments for offences subject to United States laws, all three branches of the government take a hand. The legislative branch makes laws fixing the penalty for various grades of misconduct; the courts decide whether and to what degree an accused person has made himself subject to these penalties (see page 169); and the Executive, through his subordinates, carries out the sentence of the courts (see pages 121-122). This is true both as regards the national government and the state governments. All these branches have to act in order to get an offender into jail.

As a matter of fact, all three *may* have to act in order to enable the United States to do *anything*; but the necessity is not quite so striking in other cases, for in inflicting punishments all three *must* act.

National Offences.—Its powers fall under nine heads. It may punish (1) piracies and other offences committed on the high seas; (2) counterfeiting its coins or securities; (3) crimes or misdemeanors of its own civil officers; (4) treason; (5) ordinary offences committed in the District of Columbia or the territories; (6) certain offences committed by its soldiers or sailors either in war or in peace; and (7), if the safety of the country shall require it, any act committed by any one in times of rebellion or invasion; (8) smuggling and “moonshining”; (9) offences against the Constitution, treaties, or laws of the United States.

The right to punish piracies and other offences at

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sea naturally belongs to the national government. Pirates are enemies of humanity, and any nation may take and hang them. Other offences on shipboard are usually punishable by the country to which the ship belongs.

The punishment of counterfeiting also naturally belongs to the national government. Congress makes the coins, notes, stamps, bonds, etc., and is entitled to protect them. Such protection, however, extends also to the bonds, notes, etc., of foreign governments.

High officers of government may be "impeached" for offences by the House of Representatives (see pages 171-172) and tried by the Senate, and if convicted *must* be removed from office, and *may* also be disqualified to hold any further office under the United States. This is the extent of the punishment the national government can inflict in such cases, but the *state* in which the offences were committed may further punish the offenders in ordinary ways.

Treason in the United States consists only in making actual war against the United States or in giving aid or comfort to those who are levying war against it. Congress may fix the punishment of treason, but this punishment must not extend to "corruption of blood," which means that it must not cut off all the inheritable rights of the traitor's children. Under the old English law such children could not inherit through their father from earlier ancestors; their grandfather's estate, for instance, would go to other heirs. The Constitution says that Congress may not inflict such a punishment as this. It may, however, punish a traitor with death and with confiscation of his entire property.

In the District of Columbia and the territories full control, including the right to punish all offences, belongs to Congress. As a rule, it turns over the details of this control to the legislatures of the territories, but it can at any time resume its authority.

The army and navy are placed under the control of

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Congress, which has prescribed a code of rules for their government known as the articles of war. These articles constitute *military* law; they apply *only* to sailors and soldiers (including militia, volunteers, etc., when in the national service), and they are in force both in peace and in war. They do not free an offender from punishment by ordinary law; they only *supplement* such law. A soldier who had committed a murder, for instance, would ordinarily be tried by jury and punished in the ordinary way by the authorities of the state in which he had committed the crime. If he committed it in a national fort, however, he would be tried by a United States court or by court-martial, whichever Congress had prescribed. But a soldier who had disobeyed his officer would be tried by court-martial and punished by the military authorities.

In time of insurrection or invasion, however, if the public interest shall require, *military* law may be supplemented by *martial* law, and enforced against both soldiers and civilians. Martial law is really no law at all; its exercise means that all the ordinary safeguards of the individual are suspended and the will of the military authorities substituted.

The Constitution nowhere *empowers* the government to establish martial law; but it does say that the privilege of the writ of *habeas corpus* shall *not* be suspended *unless* when in cases of rebellion or invasion the public safety shall require it, which amounts to saying that in such cases it *may* be suspended. The writ of *habeas corpus* is an order issued by a judge directing a prisoner to be brought before him that he may inquire into the causes of his imprisonment. If it is suspended, there is no immediate way for the civil authorities to control the action of the military.

As the Constitution does not say expressly that the *writ* may be suspended, it of course does not say *who* may suspend it. It is generally agreed, however, that only Congress can authorize its suspension for any length of

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time or over any large district. During the Civil War Congress authorized the President to suspend the writ when he considered it necessary. But in case of emergency the President or even subordinate military commanders may suspend it or refuse to obey it if in their judgment the case demands such action.

The suspension of the writ carries with it the suspension of jury trials, etc., for persons accused of military offences. Such persons, whether soldiers or civilians, may be tried by court-martial, convicted, and executed without the intervention of a jury. The accomplices of Booth in his murder of President Lincoln were tried and were put to death by order of a court-martial.

Smuggling is secretly bringing goods into the country without paying the customs duties; "moonshining" is making whiskey without paying the internal revenue taxes. Both are law-made offences (see pages 206-207). They are punishable with fine and imprisonment.

Offences specifically named in the Constitution have been treated above. Since *treaties* are law, their infraction would be punished by the nation. The doctrine of incidental or *implied powers* carries with it the right of Congress to punish violations of all laws passed to execute those powers. Offences against the national banking act, for instance, are prosecuted by the Federal government.

TOPICS

If a man is found passing counterfeit bills of the Dominion of Canada, does the law punish him?

Where are the Federal prisons in which offenders against national laws are confined?

PART VII.—LEGISLATIVE POWER OF MONOPOLY

CHAPTER XX

COPYRIGHTS AND PATENTS

CONGRESS may grant copyrights and patents, securing to authors and inventors for a limited time a monopoly of their work.

Before a manuscript is published or an invention is patented they are protected by ordinary laws, and the courts have inflicted very severe punishments for stealing and publishing or manufacturing them. *After* they have been printed or manufactured, however, they become the free property of the world, unless they have been “copyrighted” or “patented.”

To secure a monopoly in them the author or inventor must go through certain forms of application and pay certain fees. If the government finds that no one has a prior right to the matter, it will grant the application, after which all persons are forbidden for a number of years to infringe on the monopoly of the owner. The government, however, does not *defend* the owner's rights; he must himself assert and defend them in the courts, as in any ordinary suit at law.

Foreigners can secure American copyrights by complying with certain further requirements, one of which is the manufacture of the book in the United States.

This condition, due to the influence of printers, stereotypers, and allied trades, represents a form of protection for home industry not to be found in the laws of European

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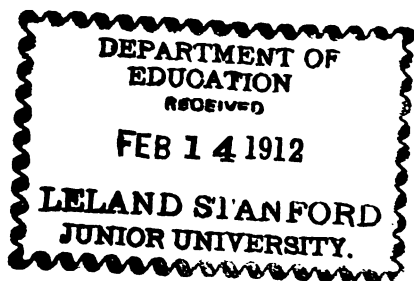
countries. But even with this requirement the law represents a great gain to foreign authors, for it was not until 1891 that they were allowed the benefit of copyright in the United States at all.

TOPICS

Is there any great injustice to authors in our copyright laws?

Why are the fees for patenting an invention so much larger than for copyrighting a book?

What is meant by "pirating"? "Infringement"?



PART VIII.—EXECUTIVE POWERS

CHAPTER XXI

THE PRESIDENT

General Executive Powers.—The President is charged by the Constitution with the execution of the laws of the United States. By far the greater part of the work of the executive branch is in carrying out this direction.

Few laws execute themselves. When a law forbidding crime is enacted, it executes itself as long as people obey it, but if they violate its provisions, these can only be enforced by the Executive, in accordance with decrees of the courts.¹ Other laws—laws imposing taxes, for instance—cannot even be obeyed until the government puts the necessary machinery into motion. It is the President's duty to start the machinery and to supervise its working.

He does not *make* the laws—that is the affair of Congress; he only *executes* them (through subordinates) as he understands them, being guided in his interpretation by the advice of his attorney-general. In case his interpretation is disputed by some one who is materially interested, he has no power to insist on his judgment; the matter must be submitted to the courts, who will declare what is the true meaning of the law. Of course, in case of emergency, he may go ahead according to his best judgment, and let the matter be considered later by the courts.

¹ Congress provides penalties, the courts declare when these are to be inflicted, and the Executive carries out the sentence. (See "Punishments," page 114.)

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To aid him in his work he has nine secretaries, each of which is at the head of one of the "executive" departments. The Constitution speaks of these heads, but it nowhere provides for their appointment. Congress accordingly has supplied this lack, providing as many as it thinks are required by the needs of the country, and apportioning the tasks of the government among them.

Each head of department is charged with the execution of the laws on the subjects that fall within his particular province. One department, that of the Attorney-General, is also charged with the duty of seeing that his colleagues and people in general obey the laws. He is the attorney or counsel of the government; in case of doubt, the President and the other heads go to him for advice as to what the laws actually do require, and they are required to act in accordance with his advice until and unless it is reversed by the courts. If they fail to do so, they make themselves liable to impeachment.

Particular Powers of the President.—In addition to his general power and duty to execute the laws, the President is endowed with certain particular powers and duties.

He appoints to office. (For a full discussion of this subject, see pages 162-165.)

The command of the army and navy resides in the President for two reasons: (1) because such power, which may obviously demand instant action, must naturally be placed in the hands of some one man; and (2) because historically such power has always belonged to the ruler of a country.

The President may use the army and navy to execute the laws. Lincoln did this when he used it against the Confederate States, though of course it required the action of Congress to raise the additional troops required; Cleveland did it when he sent troops to Chicago in 1894 to prevent obstruction of the mails by strikers. The President may also use it to enforce a judgment of the United States courts in case the civil machinery refuses or fails to act.

Reprieves and pardons may be granted by the President

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for all offences against the United States, except in cases where the offender has been impeached. Reprieves suspend the execution of a sentence, particularly a death sentence. Pardons fully release the offender. Until one has been convicted of crime there is technically nothing to pardon him for, and many persons contend that no pardon can be granted until after trial. The Supreme Court, however, has decided that the President can pardon before trial, and thus spare the accused (whose act, while illegal, may perhaps really be justifiable and even commendable) the expense, discomfort, and jeopardy of a trial.

General pardons or amnesties were proclaimed by both Lincoln and Johnson to those who had been in rebellion against the government. Both had been authorized by Congress to issue these, but Johnson continued to proclaim them after Congress had repealed the authorization, claiming the right under his constitutional pardoning power.

Conviction of a felony deprives a man of his "political rights"—the right to vote, hold office, etc. These are restored by a pardon, and accordingly the President frequently pardons offenders after their sentences (imprisonment, fine, and so on) have been executed.

The negotiation of treaties is a function of the Executive, but their ratification is a matter for the Senate. It is often said that the Senate acts as part of the Executive in considering treaties, but this is not true; a treaty is a law, and differs from other laws only in being proposed by the President and requiring the adoption by two-thirds of the Senate instead of a majority of both House and Senate. Ratification is purely legislative.

The approval of laws rests with the President. Every act of Congress must be sent to him for his approval before it becomes the law of the land. If he disapproves it, he may send it back to Congress with a message stating his objections. This is called "vetoing" the bill. If he sends it back with such a message, Congress may pass it again,

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if it so desires; and if it does so by a two-thirds vote, it becomes a law; the President cannot veto it again.

If the President takes no action, the bill becomes a law without his approval at the end of ten days, unless Congress adjourns and so deprives him of the chance of returning it. Any bill passed in the last ten days of any session of Congress must be *approved* by the President or must fail. In such case the President cannot have the full ten days in which to consider the advisability of returning it, and if he lets Congress adjourn without taking action the measure fails; this is called a "vest-pocket" veto.

"Extra" sessions of Congress may be called by the President when he considers that the situation demands it; most Presidents have exercised this power at least once. He also has authority to adjourn Congress, but only in case the two Houses fail to agree concerning the time, etc.; so far there has been no occasion for doing this. In Great Britain the King may at any time either convene or dissolve Parliament.

The President may convene either House without the other. This power as to the House is useless, for the House alone is powerless. In regard to the Senate, however, it is very useful, and is frequently exercised; in fact, an extra session of the Senate to act on nominations is invariably called for the March 5th immediately following the accession of a new President.

Ambassadors and ministers of foreign powers are received by the President if he sees fit to receive them. This is an important power, as the reception of a diplomat involves the recognition of his country as a nation, and may give it greatly desired privileges. If the Confederate States could have secured recognition by Great Britain and France, it would have given them important rights as well as strong moral support. A minister may not enter on his duties till he has been received by the sovereign to whom he is accredited. Consuls are not received personally; they submit their credentials to the Secretary of

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State, and may begin work when they receive from him an "exequatur" or formal acknowledgment of the same.

TOPICS

What are the nine "executive" departments?

In what order and when were they organized?

Who are the present members of the cabinet?

When and for what was the last extra session of Congress called?

PART IX.—JUDICIAL POWERS

CHAPTER XXII

THE COURTS

Extent of Powers.—The judiciary branch has jurisdiction (power) over most national cases.

Such power is, of course, essential to the peace of every country. Each must have some supreme tribunal from whose decision there is no appeal; else the result will be chaos. The crowning defect of the Articles of Confederation which preceded the Constitution was that they provided no such body. Each state had its own supreme court, and if these disagreed on a case common to two or more of them there was no tribunal to decide. The Constitution, however, set this right.

National cases are cases that concern the country as a whole; they include (1) criminal cases, or offences against United States laws (see page 115), arising under treaties, on the high seas, or in connection with ambassadors, ministers, etc.; (2) cases between two states (or their citizens¹) or between a state and a foreign country (or their citizens); (3) cases between citizens of the same state claiming under grants from different states. The United States courts have jurisdiction over all such, with the sole exception of cases of a citizen against a state. The eleventh amendment to the Constitution expressly provides that no

¹The United States courts have no authority over citizens of the territories or the District of Columbia; these are not citizens of *states*, and have no power to sue in the United States courts.

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citizen may sue a state in the United States courts; all such suits must be brought, if at all, in the courts established by the state that is sued.¹ Similarly, no individual can sue the United States except in its own courts, and then only by its permission; general permission, however, has been granted by Congress, which has established a special court (the Court of Claims) to consider such cases. Judgment, however, does not execute itself; Congress must pass a bill to render it effective, and on numerous occasions it has neglected or refused to do so.

The courts have power over *cases* only. They do not decide "moot" points; nor do they render abstract interpretations of laws (this is the business of the Attorney-General²); nor do they act on political questions (such as the Hayes-Tilden contest for the presidency). Their sole office is to decide how existing laws apply in a particular case (suit at law or criminal action) that has been properly brought before them.

Original and Appellate Jurisdiction.—All cases affecting ambassadors, etc., and all cases to which a state is a party must be *begun* in the Supreme Court, which is said to have original jurisdiction over them. All other cases must be begun in lower courts, but, unless Congress has other-

¹ Under this amendment individual holders of bonds, issued in reconstruction times by the "carpet-bagger" governments of several Southern states and later repudiated by the states, have been unable to sue in the United States courts to recover on them, and have been non-suited in the state courts, on the ground that the bonds were illegally and fraudulently issued, and that in any event the action of the legislature was binding on the courts of the state. In several cases holders of such bonds living in Northern states have offered to give their bonds to their own state governments if these governments would bring suit for recovery. (A state can sue another state in the United States courts.) So far, however, North Dakota alone has the unenviable pre-eminence of aiding in such a scheme of revenge against a sister state.

² His interpretation may, of course, be set at naught later in a case in court.

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wise provided¹, may be appealed to the Supreme Court, which is said to have *appellate* jurisdiction over them.

Nullification of Laws.—The courts, like Congress and the President, are bound by the Constitution. The courts act on cases arising under the Constitution, the laws, and the treaties made in pursuance thereof, but in case of conflict between these the Constitution must rule, since the laws and treaties were made solely by its authority. The courts, therefore, before they can render decision, are bound to consider (if the question be raised) whether a law conflicts with the Constitution; if it does, they must declare it (or the conflicting part of it) null and void—unconstitutional. The courts are not to be guided by their own opinions as to whether a law is wise or foolish; the only question before them is whether it does or does not conflict with the Constitution, which binds them no less than it binds Congress. When they declare a law unconstitutional, they do not exercise a sort of veto power; they simply discover and assert a fact that existed entirely outside of themselves and their wishes.

Only twenty-one laws enacted by Congress have been declared unconstitutional, though more than two hundred laws enacted by states have been so declared, most of them in early years, before the limits of state and national power had been worked out. This difference does not by any means indicate that the Supreme Court is prejudiced against the states; it results from the fact that there are many states and only one Congress, and from the fact that Congress is naturally more careful than the states not to exceed the powers granted by the Constitution.

Contempt of Court.—One of the most important functions of a court is its power to defend itself—to punish “contempt,” contempt including both contempt in its ordinary meaning and simple disobedience.

¹ Congress has limited the right of appeal in many ways. Suits for trivial sums of money, for instance, cannot be appealed to the Supreme Court.

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These orders are ordinarily in the form of *subpœnas*—orders commanding a person to present himself “under penalty” to give testimony; *mandamuses* (we command)—orders to a particular person to do a particular thing; or *injunctions*—orders to a particular person or to all persons to refrain from doing some particular thing. Disobedience to any of these commands puts the culprit in “contempt of court,” for which, generally speaking, he may be sent to jail by order of the judge, without trial by jury and even without hearing, for a definite time or until he obeys the order of the court.

Subpœnas and mandamuses are rarely deliberately disobeyed, but injunctions are a fruitful cause of trouble. Often they are absolutely essential to protect some right that would be irredeemably destroyed long before the wrong-doer could be restrained by ordinary action of law; on the other hand, it is undeniable that they have often been used unjustly and tyrannically. Instances of this abuse have been particularly frequent in connection with labor disputes, where strikers have been forbidden, without hearing, to refrain from doing things that they had a perfect right to do (see pages 215-216). In consequence of this, many efforts have been made to limit the power of the court in this particular; but these efforts have failed so far as the United States courts are concerned. In several states, however, they have been more successful. Oklahoma, for instance, provides for jury trials in cases of contempt for violation of injunctions, and requires a hearing in all cases of contempt. This permits the courts to issue injunctions—to take instant action to prevent alleged irreparable damage—and only restrains its power to punish disobedience arbitrarily.

TOPICS

See topics after Chapters XXVIII, XXIX, and LIX.

PART X.—LIMITS OF NATIONAL POWERS

CHAPTER XXIII

RESTRICTIONS ON THE NATIONAL GOVERNMENT

General Restrictions.—The Constitution *expressly* grants certain powers to the national government (see page 23); it *impliedly* grants to it such other powers as are reasonably necessary to the operation of a sovereign government (see page 24); it reserves other powers to the several states; and, finally, it declares that certain powers shall not be exercised by the national government. Most of these special restrictions are set forth in the first ten amendments to the Constitution, which constitute a “bill of rights.”

The powers that are denied to the general government by being reserved to the states are not specified in the Constitution, which says simply that “all powers” not granted are reserved to the states and to the people. Naturally, such powers are varied in the extreme, covering practically all the domestic affairs of the American people. It is not possible to do more than to refer to them here. (For a full discussion, see pages 177-243.)

Particular Restrictions.—Particular restrictions on the United States government are few in number. Some of them, to our present way of looking at things, are not very necessary. Times have changed, however, since the Constitution was made, and restrictions regarded nowadays as superfluous were not so then. Other restrictions, however, are still important.

Ordinary process of law may not be suspended “unless

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in case of rebellion or invasion the public safety demands it" (see page 116).

Titles of nobility may not be granted. Titles have no place in a republic; to grant them is absolutely forbidden by the Constitution.

Punishments must not be cruel or unusual.

No ex post facto law (law making crimes out of *past* offences), nor bill of attainder (inflicting death without trial), may be adopted.

Direct taxes may not be imposed except in proportion to population (see page 27).

Duties may not be levied on exports (see page 27).

Commercial preference may not be shown to the ports of one state over another. The national government must show no favoritism, and must give everybody a square deal.

Coasting vessels may not be forced to "enter" or "clear" or pay port charges such as are ordinarily required at United States ports from vessels coming from foreign ports. Trade between the states must be as free as possible.

New states may not be carved from the territory of another state, or parts of states, except by consent of the *legislatures* concerned.

Only once in United States history has anything of the kind been done. When Virginia seceded from the Union in 1861, the loyal people who lived in the northwest portion of the state elected a legislature which claimed to represent the entire state. This legislature gave consent for the formation of West Virginia. The new state was promptly organized, and promptly admitted to the Union. This action, while it observed the forms of the Constitution, was very plainly a violation of its spirit, and would assuredly never have been tolerated (or attempted) under any other circumstances than those of war.

No state may be deprived of its equal representation in the Senate except by its own consent (see page 137).

No form of religion may be either established or pro-

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hibited by Congress. Congress may, however (in the territories and the District of Columbia), forbid practices which, under the name of religion, traverse the ordinary laws and shock the moral sense of the nation. Thus, while it might not interfere with the Mormon religion even in the territories, it could and did prohibit polygamy, and *could and did confiscate the property of the Mormon Church* on the ground that it was used in teaching disobedience to the law of the land, and in encouraging rebellion against the United States. When Utah became a state, the control of Congress over its morals had to cease (these being relegated to the state laws), and consequently Congress refused to admit that territory until it had placed in its constitution a so-called irrevocable law forever prohibiting polygamy within its boundaries. It is a question, however, if any such restriction is really binding on a state if it sees fit to repeal or violate it (see page 147).

Freedom of speech and the press may not be abridged. This, however, does not mean that *anything* may be said or printed without fear of punishment. The publication of defamatory or obscene matter, for instance, may be prohibited, and the same is true of matter counselling rebellion or anarchy.

The repression of such publications, however, is generally left to the state laws, which are ample, while the powers of the national government are somewhat in doubt. As long ago as 1798 Congress passed an act (known as the Sedition Act) imposing penalties on any one who published any "false, scandalous, and malicious" matter against Congress or the President with intent to bring them "into contempt or disrepute." Violent and widespread opposition to the law (and to the Alien law, which was passed at the same time; see page 113) was at once manifested, and they became the chief issue in the next following presidential campaign. They were enforced for only about two years, until Mr. Jefferson became President, when he at once pardoned all who had been convicted

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under them and refused to enforce them further, on the ground that they were "unconstitutional, null, and void." Since then no attempt at restriction has been made by Congress, and its powers in the matter are at least doubtful.

All states, however, have laws for the punishment of private libel. Any person who has been libelled may seek redress either by an action for damages or (in certain cases) by criminal prosecution. In political matters, however, great latitude of speech is allowed by juries if not by the law. Even in these, however, there is a limit. A newspaper may lampoon the President unmercifully (bring him into contempt and disrepute) and go unscathed; but if it charges that he stole even five cents, its publisher may be proceeded against under state laws for criminal libel and sent to the penitentiary.

The right to "bear" arms may not be prohibited. Congress cannot prevent a man from owning or carrying a rifle, for instance. Practice in the use of ordinary arms may very well be necessary to enable a nation to defend itself, but the carrying of a revolver ordinarily conduces only to homicide. Congress has never made a law on this subject, but the *states* (to which this restriction does not apply) have all forbidden the carrying of "concealed deadly weapons."

Private property may not be taken for public use except on making just compensation (see page 108).

Soldiers may not be quartered on citizens in time of peace. Quartering troops on citizens, who were compelled to supply them with lodging and food, used to be a favorite method of oppression. The Constitution forbids it except in time of war. This does not apply, of course, to troops operating in the enemy's country.

Unreasonable searches or seizures, either of person or of property, are forbidden. Even to-day if a man holding high political office in Europe dies suddenly, it is not uncommon for the police to seize his papers, and a century ago similar searches and seizures were common. In the

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United States, however, no man's house may be entered except on a warrant to which some one has sworn, and no man may be arrested without such warrant except by an officer of the law who has witnessed the offence (see page 351).

Double "jeopardy" is forbidden. No man, once tried and acquitted, may be tried again for the same offence. This, of course, does not prevent a new trial when a verdict had not been reached in the first one; nor a new trial when the accused has been *convicted*.

Object of the Restrictions.—These restrictions were intended for two ends: (1) to prevent the national government from tyrannizing over the states, and (2) to prevent either state or nation from tyrannizing over the people. As the government is chosen by the people, these restrictions were to protect the people against themselves; that is, to guard them against the *tyranny of a majority*, which might easily become a very grinding oppression indeed.

TOPICS

Which restrictions are designed to prevent the national government from tyrannizing over the states, and which to protect the people from tyranny by the government?

Can the states practice the things which the national government is prohibited from doing? Can a state establish a state church?

What was the attitude of the people toward a central government when these provisions of the Constitution were drafted?

BOOK III
**ORGANIZATION OF THE NATIONAL
GOVERNMENT**



PART I—LEGISLATIVE ORGANIZATION
PART II—EXECUTIVE ORGANIZATION
PART III—JUDICIARY ORGANIZATION

PART I.—LEGISLATIVE ORGANIZATION

CHAPTER XXIV

COMPOSITION OF CONGRESS

CONGRESS, according to the Constitution, consists of two Houses—a Senate and a House of Representatives. The Constitution does not mention the President in this connection, although, later on, it gives him limited authority to negative a proposed law. The Constitution, therefore, does not consider the power to interpose a negative to be part of the “legislative power” of the government—a somewhat surprising position, but not one of any practical importance.

The Senate.—The Senate is composed of two members from each state (whatever its size), chosen by the legislature thereof for a term of six years. The Senate, therefore, represents the states as such; it is a survival from the Confederation days, when the Congress consisted of one House only, in which each state had one vote. When the Constitution was adopted the states were far more jealous of their rights than they are now, and feared greatly that they might lose their identity in that of the national government. As a mark of their “sovereignty” they established the Senate, in which all should be equal; and to guard against any possibility of losing this equality they provided that no state should be deprived of it without its own consent, which, of course, would never be given. This is one of the irrepealable provisions in the Constitution; not even the people can change it. Senators must be at

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least thirty years old, and must be actual residents of the states from which they are chosen.

In case one of a state's seats in the Senate becomes vacant when the legislature is not in session, the Governor of the state may name some one to fill the place until the legislature can meet and elect. However, if the legislature, for any reason, adjourns without having elected any one, the place must remain vacant; under such circumstances the Governor has no power to fill it.

The Senate is a continuing body—one always in existence. One-third of its members go out of office every two years (in odd years), while the other two-thirds "hold over." There is, therefore, always a majority of the Senate sworn in, and the Senate itself is always qualified to do business.

The Vice-President of the United States (who is elected every four years along with the President of the United States) is the President of the Senate. All other Senate officers are elected by the Senate, and retain their posts until their successors are elected. Ordinarily the Vice-President presides; he has no vote unless the Senate is a tie on any question, in which case he has the casting vote. At the beginning of each Congress, to provide against the temporary or permanent absence of the Vice-President, the Senate chooses a temporary President or "President pro tem.," who retains his ordinary vote, and having once voted has, of course, no casting vote if the Senate be equally divided. The President pro tem. is *not* Vice-President and does not succeed to the presidency (see page 162).

The House of Representatives.—The House of Representatives is composed of an indefinite number of members elected by the *people* of the states for terms of two years; the exact number from any state at any particular time is in proportion to its population, except that every state must be allowed at least one Representative. The first House of Representatives (apportioned by the Con-

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stitution itself in advance of a census) numbered sixty-five; the first House, after an enumeration of the people had been made, numbered one hundred and five—one for every thirty thousand of the population. The Constitution says that there shall not be more than one Representative for each thirty thousand people, but leaves it to the Congress to decide whether or no there shall be less. After each ten-year census, Congress has increased this “basis of representation”; after the census of 1900 it provided for only one Representative for every 193,291 *people* (not every 193,291 *voters*) in the country. Despite this increase in the basis, the total number of Representatives has steadily increased.¹

Representatives in Congress are voted for by the persons who are allowed by the states to vote for the most numerous branch of the state legislature. Whoever can vote for members of the one can vote for members of the other. If a state disqualifies any class of its citizens for voting for its own legislature, by so doing it disqualifies that class for voting for members of Congress (see pages 144-149).

The House of Representatives represents the people rather than the states. It is, therefore, ordinarily termed the “popular” branch. It has always been considered in a way inferior to the Senate, but there is no warrant in the Constitution for this. As a matter of fact, the House is, if anything, the more powerful of the two, for it holds the purse-strings, being granted the sole power to originate laws imposing taxes. Nevertheless, the resemblance between the Senate and the British House of Lords; the fact that Senators may be considered a sort of “ambassadors” from their states; and the fact that a Senator, who with only one companion represents a whole state, is naturally of greater importance than a Representative, who represents only a fraction of a state, has given the Senate an

¹ After March 4, 1913, the number of Representatives will be four hundred and thirty-three; an increase of forty-two.

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exaggerated importance in popular estimation as compared with the House.

Vacancies in the House of Representatives must be filled by elections, which, if need be, must be specially called; the Governor has no power to fill them, even temporarily.

Representatives are ordinarily chosen from "districts." There is nothing in the Constitution to compel this, however. Representatives can be, and not infrequently are, chosen on a general ticket by all the voters of the state, in which case they are said to be chosen "at large."

The general plan, however, is to elect by districts. These districts are laid out by the legislatures, and can be changed by them in accordance with the state constitutions. With scarcely an exception, legislatures attempt to secure more or less partisan advantage in making these districts. Sections of the state that normally vote for the party *not* in control are, so far as may be, thrown together into one district or a few districts, instead of being allowed to imperil the dominance of the party in power by being scattered through all the districts. For instance, the partisan legislature of a state having a population about equally divided politically, will often carve out one district that will include the majority of the voters of the opposition party, thus insuring to its own party the practical control of all the other districts. This process is called "gerrymandering" from Governor Gerry, of Massachusetts, who invented it. If it is carried to too gross and palpable an extreme, the courts are likely to annul the law as being in violation of the state constitutions.

Representatives must be at least twenty-five years of age. They must reside in the *states*, though not necessarily in the *districts*, from which they are chosen. They need not be *voters*, however.

The House of Representatives is not a continuing body like the Senate. It goes out of existence every two years on March 4th, and remains out of existence till the members-elect meet and reorganize. Ordinarily in odd years

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there is no House of Representatives at all between March 4th and the first Monday in December; the members are, of course, in existence, but the House as a whole is not.

The clerk of the House, an elective officer, is the sole bond between one House and another. He it is who takes the chair and calls the roll at the meeting of a new Congress. His presence and assistance, however, can be and have been dispensed with if need be.

The House chooses all its officers, including the presiding officer, who is called the Speaker. The Speaker has only his vote as a member. He has no casting vote. A tie vote in the House decides the question in the negative.

The Two Houses.—Once elected, both Senators and Representatives are the sole judges of their political actions; neither the legislatures nor the people of their states have any right to control them. If their actions are distasteful to the people who elected them, they can only be defeated for re-election. Any act of the legislature "directing" its Senators or "requesting" its Representatives to do this or that is absolutely ineffective legally, and may be disregarded, though such action, of course, has great influence on those to whom it is addressed.

The people of Oregon, by the state constitution, retain the power to "recall" any state official whose actions are not satisfactory to the people (see page 254). This power, however, does not extend to Congressmen, who are United States, and not state, officials.

Each House is the sole judge of the qualifications of its members. A majority can decide for or against the admission of a member; once in, however, it takes a two-thirds vote to "expel" him. The House decided, however, in the case of Mr. Roberts, of Utah, that it had power to declare by a majority vote that an apparently duly admitted member was not really a member at all, because, being a polygamist, he had never been qualified to become such.

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Senators and Representatives are paid for their services, differing in this respect from the British House of Commons. The framers of the Constitution wanted to make it possible for a poor man to be in Congress. Congress sets the salary of its members (now seventy-five hundred dollars), but public opinion would condemn any body of legislators who increased their own stipend, although they might very properly pass an act to operate after the expiration of the term for which they were elected.

While attending sessions, members of Congress are exempt from arrest for all causes except felony, treason, or breach of peace. They are not responsible to any one outside of their own House for anything they may say in that House. These exemptions are absolutely necessary to make sure that a state shall not be deprived of its members, and to make sure that these members shall have freedom of speech.

No person holding any office under the United States may be a member of either House during his continuance in office, nor may any Senator or Representative be appointed, during the term for which he was elected, to any civil office under the United States which was created, or the pay of which was increased during his term. When an office-holder is elected to Congress, he may hold the office until he is ready to take his seat, when he must resign. A *state* officer may, however, be also a Senator or a Representative; Senator D. B. Hill was Governor of New York and Senator at the same time. The restriction as to pay was intended to prevent Congressmen from creating overpaid offices which they themselves might hope to fill. The restriction, however, is only partial, as a Congressman could take such an office after the end of his term. Under this clause Mr. Knox, of Pennsylvania, would have been prevented from accepting the office of Secretary of State, the salary of which had been increased while he was in the Senate, until the close of his term (in 1911). Congress, however, repealed the law authorizing the in-

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crease, so far as it concerned the Department of State—an action which was construed as permitting Mr. Knox to take the post in 1909.

Neither House, during the session of Congress, may adjourn, without the consent of the other, for more than three days, nor to any other place than that in which the two Houses are sitting. If the two Houses cannot agree as to the time of adjournment, the President may adjourn them to such time as he may see fit; there has, however, never been any occasion for him to exercise this power.

TOPICS

Is re-election to the Senate common? Is the custom a good one or not?

What disadvantages are there in the present method of electing Senators? What changes might be advantageous?

A Senator must be a resident of the state which sends him to Congress. What disadvantages are there to this arrangement?

How many Senators are there now? How many were there at the first session of Congress? How many Representatives then and now?

What arguments are there for and against electing all Representatives from the state at large? From districts? From anywhere in the Union?

How can it happen that a state having about 290,000 Democrats sends twelve Representatives to Congress, while the 260,000 Republicans can elect only three?

Find out about proportional representation and state what change it would make in such a case.

CHAPTER XXV

ELECTION OF CONGRESSMEN

THE Constitution says that Senators shall be elected by the legislatures of the states, and that Representatives shall be "apportioned" among the states in proportion to population, and shall be voted for by whomever the states permit to vote for "the most numerous branch" of the legislatures. Both of these provisions are apparently simple and direct, and doubtless those who drafted them expected them to work smoothly.

As a matter of fact, however, one or both have been more or less in dispute since the foundation of the government, and both are to-day subjects of much political interest.

Election of Senators.—The Constitution made no rules concerning the method of choosing Senators; it left this to the state legislatures, but provided that Congress might at any time alter any regulations that the states might have made except as to the *place* of election, this last clause being inserted to prevent Congress from controlling the meeting-places of the legislatures. Congress, in 1866, construed this as giving it permission to regulate the entire subject, and adopted a general law which is still in force. By this, the legislature chosen next preceding the expiration of a Senator's term must, at its first session, on the second Tuesday after convening, proceed to elect a Senator. Each house at first votes separately; on the next day the two meet in joint assembly and vote together; if no candidate receives a majority of all the votes cast, the legislature must

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meet day by day thereafter, taking at least one vote each day until some one is elected or until the session ends. To be elected it is not enough that a Senator shall receive more votes than any other candidate; he must receive a majority of all the votes cast.

This mode of election worked very well for many years, but, with the steady growth of democracy, an agitation sprang up for the election of Senators by popular vote. As the Constitution says flatly that they shall be chosen by the legislatures, such a change could only be brought about by an amendment to the Constitution. But it is difficult to amend the Constitution, and after many failures to secure action¹ attention was turned to devising a method of securing what should be practically a popular election under the existing law.

By a plan which has been adopted in a number of the states the people at an ordinary election designate the man whom they want the legislature to elect to the Senate. Such an election has no *legal* force; the legislature is at entire liberty to disregard it, and to elect whom they choose. As a matter of fact, they did disregard it on sundry occasions, until the plan was adopted of requiring all candidates for the legislature to pledge themselves to vote for the man selected by the people for the Senate. Since then there has been no evasion.

The most extreme case of submission to this "mandate" was in Oregon in 1908-09, when a Republican legislature elected a Democrat to the Senate because the people of the state had declared for him.

¹ The House several times proposed such an amendment, but the Senate always refused to concur. The state legislatures then began to pass resolutions requesting Congress to submit such an amendment. By 1909 two-thirds of the states had made this request. This action, however, was ineffective legally; two-thirds of the states can compel Congress to call a convention for considering amendments, but cannot compel the submission of any one particular amendment.

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There is no doubt that such a method as this is a perversion of the *ideas* of the men who drew up the Constitution. This, however, counts nothing against it. In literally hundreds of other cases our present construction of the Constitution is utterly different from that of the founders. The chief virtue of the Constitution is the fact that it is elastic enough to permit just such things; it grows with our growth, and is not a strait-jacket that prevents all change. Senators chosen under the new plan represent the *states* just as much when designated by the people as when designated by the legislature, and it is hard to see how the general adoption of the system can work any harm to the nation.

Election of Representatives.—Representatives are apportioned to the states in proportion to their “populations.” Population would seem a very easy thing to define, and so perhaps it is, but it has not been at all an easy thing to apply as a basis of representation. Originally it included, for purposes of representation, all free residents of a state, including foreigners, but excluding Indians who paid no taxes (by reason of living in tribal organizations), plus three-fifths of all other persons—that is, plus three-fifths of the slaves. After the Civil War, however, an amendment (the fourteenth) to the Constitution changed this basis, making it consist of *all* residents (except Indians), but providing that if any state chose to deny the right to vote at general elections to any *male inhabitant twenty-one years of age*, then its representation in Congress should be reduced in the proportion which the number of such disqualified males should bear to the total male population; that is, a state could deny the suffrage to negroes or to any other class of its citizens for any cause; but if it did so, it was to lose correspondingly in its representation in Congress.

Later still, another amendment (the fifteenth) declared that no state should deny the right to vote to any one “on account of race, color, or previous condition of servitude.”

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The states, therefore, were forbidden to deny the right to vote to negroes simply because they were negroes. They were still permitted to deny the right to vote to any class of citizens for any other reason (such as ignorance, poverty, conviction of crime, etc.); if they did so deny it, however, they were to lose correspondingly in their representation in Congress.

The object of these amendments was to assure to negroes the right to vote, and for a while they attained their end. Finally, however, the people of the states having a large negro population, being unable to repeal the amendments, set out to evade them.

Negro Disfranchisement.—This was done by requiring from voters proof of one or more of the following: (1) ability to read or explain any section of the Constitution; (2) payment of taxes or the possession of a certain amount of property; (3) good character or moral repute. These provisions, while not improper on their face, were yet capable of gross injustice in their application. Quite generally, too, they were accompanied by a provision excepting from all tests the descendants of those who had served in any war or who were voters before 1867—a condition that exempted most of the whites, and left the restrictions to apply only to negroes.

These requirements had to run the gauntlet of the Constitution and the laws. When the Southern states had been readmitted after the Civil War, Congress had required them to put in their constitutions a “fundamental condition” that they should never make any law restricting the suffrage. The requirements clearly *did* abridge the suffrage, but on appeal to the Supreme Court that body declared the fundamental condition unconstitutional—that a state could not be forbidden by Congress to make what laws it liked.

The next question was whether the requirements were in violation of the fifteenth amendment. If they were, they were unconstitutional, null, and void, and there would

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be no need of considering how the fourteenth amendment bore on them. The Supreme Court, however, decided that they were constitutional.

Then came the time to apply the fourteenth amendment. According to the plain letter of the Constitution, states with such laws should unquestionably lose in representation. So far, however, they have not so lost, and there is little immediate prospect that they will so lose.

There are two reasons for this. The reduction, however warranted, does not come about automatically. Congress makes the apportionment of Representatives to states once every ten years immediately after the results of the census (taken every ten years) are known. Congress, therefore, must decide whether the representation of a state is to be reduced. But before Congress can do this (can take anything except the census figures as a basis for calculation), it must find out whether the voting power *has* been restricted, and, if so, by how much. This last is not so easy to do. Who can tell, for instance, how many voters have been shut out by Maryland's or Massachusetts' educational law? The states themselves need keep no record even of those turned away from the polls—not to speak of those who stay away. The total vote does not show, for, in states where the result of the election is certain, the vote is always light—people on the winning side stay away because their votes are not needed, and people on the losing side stay away because their cause is hopeless.

To ascertain the exact effect of any law restricting voting, it would be necessary (1) for Congress to adopt a law for national supervision of elections (which always has been and always will be very unpopular), and would be bitterly opposed both in the making and the execution; and (2) after getting more or less correctly the information needed, it would have to act on it in making the apportionment (which again would be so bitterly opposed as to be almost hopeless).

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Again, most of our citizens seem to have come to the conclusion that it was a mistake to grant votes indiscriminately to the negroes, and seem to be willing to permit those states that have large ignorant, black, or objectionable populations to deal with them in their own way.

Further, to most people the question seems entirely a local one. Why, for instance, except as a matter of abstract justice, should a resident of Wisconsin object to a negro in Louisiana being denied the right to vote? As a matter of fact, he usually does *not* object, comfortably concluding (if he thinks of the matter at all) that such denial does not affect *him*.

In this, however, he is wrong. There are undoubtedly several Southern states in which the mass of the negroes are prevented from voting. If they did vote, they so outnumber the whites that they would practically determine every election. We must admit that in such states the Presidential electors, the Senators, and the Representatives are selected, not by the majority, but by a minority. This seems unjust. If so, what is the remedy? We have already repudiated the conduct of Federal elections by the national government. Shall we cut down the apportionment of such states? We have seen the difficulty of such a step. Since United States Senators are now elected by the state legislatures, it would seem necessary to insure to the negro his vote in state elections, if he were to participate indirectly in the choice of a Senator. Not a state in the Union would welcome such an invasion of its long-accepted rights. The South particularly would object to any such scheme that might put all legislation in the hands of the negroes. In the North negroes are debarred from certain restaurants and sections in the theatres. In the South this could no longer be done if the colored man controlled legislation. Consequently the South would bitterly contest any action to grant the franchise to the blacks.

Is there no quiet and orderly solution? We might hope

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for a rule to be applied in political affairs that obtains in social. We grant social recognition and equality only to those, white or black, who have demonstrated their worthiness. So, too, it is reasonable to ask that before we grant him the franchise the negro fit himself by his sobriety and diligence and education to exercise it wisely. When the negro reaches a level where he will use his majority not as a means of tyranny, but intelligently and generously, it will be a departure from American standards and precedents if he is not given the right of suffrage.

TOPICS

What advantages would there be in having Senators elected by popular vote?

Have negroes ever served as Representatives or Senators?

Who are the Senators from your state? When were they first elected? How many Representatives has your state? What is your district, and who is your Representative? To what parties do the Senators and Representatives belong?

CHAPTER XXVI

THE RULES OF THE HOUSE OF REPRESENTATIVES

SELDOM indeed is it that the rules of procedure in a legislative body become a subject of political interest throughout a country. The world over, almost without exception, such rules have been both inconspicuous and innocuous—mere machinery to enable business to be carried on smoothly. Until recently the rules of the House of Representatives have been such and so administered as to constitute a real danger to the republic.

Republican government represents the consensus of opinion among the people; that is to say, it stands for the compromise of diverse opinions and for agreement on some course of action which, while it embodies the will of the majority, yet does not trample too brutally on the wishes of the minority. It does not, or should not, stand for blind power.

Objects of a Legislature.—The functions of a legislature are twofold. Its duty is not solely to enact laws. Quite as important is its office to supply a forum where proposed laws may be threshed out. No man should have cause to say, or believe, that his side of any question was denied a fair hearing; that justice and reason were crushed by the brute force of a majority which refused even to listen to arguments. On the other hand, the majority must rule; it must not be the slave of a factious minority which carps at everything not in accord with its wishes. A legislature that cannot legislate is impotent indeed.

Full and free discussion, and ability to secure action,

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are both essential to a legislature. If the first increases too greatly, the government becomes weak and ineffective if not worse; if the second increases too greatly, the government becomes tyrannical.

The existence of these diametrically opposed requirements has been recognized since the dawn of legislative government, and for centuries men have been trying to devise a scheme of parliamentary law that would insure full and fair debate and yet would enable the majority to rule when the test came.

For just one hundred years the United States Congress gave greatest heed to the first requirement, and—some people say—became ineffective in consequence. For the last twenty years it has gone to the other extreme. The golden mean, however, seems nearer.

Establishment of the Present Rules.—The change was brought about by what was, or seemed to be, a partisan necessity.

The House of Representatives of the Fifty-first Congress was very evenly divided between the great parties of the country, the Republicans having a majority of only six in the entire membership of three hundred and twenty-five.

The Constitution provides that a majority of each House shall constitute a quorum to do business. If a less number is present any one can call attention to the fact, and all business must be suspended until a quorum is secured. Some Democrats, realizing this fact, declared before the Fifty-first Congress met that if the Republicans wanted to pass any political measures during the session, they would have to do so by a quorum mustered exclusively from their own votes, otherwise the Democrats would absent themselves and “break” a quorum; that is to say, the Republicans had to have one hundred and sixty-three out of their total force of one hundred and sixty-six continually on hand in order to do any business.

In any body of men as large as Congress there is sure

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to be a certain percentage of absentees, which will of course vary, but will seldom fall below five or ten per cent. The effect of this is guarded against in all legislative bodies by a system of "pairing," by which a member of one party who expects to be away "pairs" himself against a member of the other party; neither will vote until both are present. Pairing will often very largely reduce the total vote cast without affecting the majority. There are also nearly always a few absentees who are not paired.

In the Fifty-first Congress, if as few as four Republicans were absent, whether paired or unpaired, that party would have present less than a majority of all the whole members of the House. Practically this meant that if the Democrats carried out their threats to absent themselves, the Republicans would be unable to do any business at all during the session.

The situation was really even more exasperating than this, for the Democrats had no intention of absenting themselves *physically*; they intended to do so *constructively* only. That is to say, they meant to debate a question as long as possible, and when at last a vote was taken they intended to refuse to vote. The *record* of the vote would show less than a quorum present, and the measure would fail. The Constitution gave the House power to compel the attendance of absentees, but there was no use in compelling them to be present unless they would vote. Practically the majority, which is to say the House, would by this plan be rendered not only powerless but ridiculous.

The Reed Rules.—This was the situation that bred the "Reed rules." Without going into details, it may be said the Speaker (Mr. Reed, of Maine), backed by his party, forced through a brand-new method of procedure by which a majority of the members present could do business.

This new method provided: first, that a member could not be at once physically present and constructively absent; a member present on the floor could not "break" a quorum by refusing to vote; if he attempted to do so,

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the Speaker could "count" him as part of the quorum that was physically present.

Second, it provided that "dilatory" measures could be disregarded by the Speaker. In the old days a favorite device to prevent action was to interpose "dilatory" motions, or filibuster, as it was called. A member would move to adjourn, and would lose. He would move to do something or other, and it would be voted down *viva voce*. He would appeal from the decision of the Speaker, and would lose. Then he would demand a vote on the original motion by "tellers," and would lose again; he would call for a "yea and nay" vote, and would lose once more. Then he would once more move to adjourn. All this would take an hour or more, and as soon as he sat down another member would jump up and go through the whole thing again. And then another! Finally the day would close with nothing done. The Reed rules gave the Speaker power to decide when a motion was dilatory, and, if he so considered it, to refuse to put it to the House.

Third, the Reed rules created a "committee on rules," which was empowered at any time to report a "special" rule, providing, for instance, that a particular measure should be taken up on a certain day and should be debated for a certain number of hours, at the end of which time a vote should be taken.

There were other provisions, but these were the most radical.

Results of the Rules. — These provisions aroused intense excitement, and led to the utter defeat of the Republicans at the election immediately following their adoption. But, lo and behold! when the Democrats got control, they adopted the same rules with only slight modifications. The fact was that these changes in procedure were necessary to enable the majority to do the work for which it had been elected. The debating side of the work of Congress had become too prominent at the expense of the "action" side, and it was necessary for a corrective to be applied. If

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the rules had stopped there, opposition to them would probably have long ago disappeared.

But they did not stop there. Unlimited power never does stop until it is compelled to do so. Little by little the new plan was broadened, more by construction and interpretation and aggression than by actual verbal change, until to-day it has practically destroyed the deliberative power of the House of Representatives, and has grown from a system by which the majority can impose its will on the minority into a system by which the *majority of the majority* can impose its will on the House, and by which the committee on rules can impose its will on the majority of the majority.

This is possible by two provisions (or constructions) of the rules. One of them lies in the Speaker's exercise of his power to recognize a member, and the other in the growing assumption of authority by the Rules Committee.

It is, of course, necessary in all deliberative bodies that only one member should speak at once; the power of the chairman, or Speaker, to "recognize" the members and give them the "floor" cannot be dispensed with. But this great power to say who shall speak and who shall not is supposed to be exercised with fairness; never before in the history of the world was it construed to give the Speaker power to prevent all discussion and even all mention of matters of which he did not approve. In the Senate the presiding officer is required to recognize the first Senator who addresses him; but under the present system in the House of Representatives, any member wishing to be recognized must first go privately to the Speaker and explain fully the subject on which he desires to address the House. If the Speaker disapproves of this object, or if the member does not first come to him, he will refuse to recognize the member, thus depriving him of all opportunity to make the House acquainted with his wishes. This, of course, is a flagrant denial of right and a most dangerous abuse of power.

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Another great source of the Speaker's power, now denied him, lay in his appointment of all committees, including that on rules, of which he was a member. Through his power to discipline members by his control of places on committees, he could command a large and obedient following. Naturally his appointees to the committee on rules were men who were simply to reflect his will. The "special rules" introduced by it from time to time in regard to particular bills have been steadily growing broader. Designed at first to limit debate and bring matters to a conclusion, despite any opposition they have grown into a prevention of all debate.

A revolt against these conditions in March, 1910, resulted in these important changes: first, the committee on rules is henceforth to be elected by the House, is enlarged to ten members, and the Speaker is no longer a member of it; second, from now on a motion to oust the Speaker is of the highest privilege, always in order; and, third, it was ruled that a motion to change the rules is in order at any time. It must be added that this last provision was repudiated by Congress in January, 1911, when it sustained the Speaker, who refused to recognize such a motion.

Two other important advances have since been made. Commonly in the past a special rule in regard to some measure of great importance has limited the debate to *one or two hours* and added that the bill *should not be subject to amendment*; that is to say, no matter how objectionable one or more of its provisions might be, neither the minority nor the *majority* might alter them; all they could do was to *defeat the whole bill*—a bill which they might greatly favor as a whole. That is to say, a majority of the original committee that considered the bill (say, eight members), backed by a majority of the Rules Committee (now six members), could force the entire House to endorse any provision, whatever they might incorporate in a bill, or to defeat the entire bill. The Sixty-second

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Congress has passed a rule permitting legislation on such a bill that might tend to retrench expenditures. Finally it declared that all committees must be elected, instead of being appointed by the Speaker.

Party Rule through the Caucus.—The fact that the Speaker's powers have been somewhat curtailed, and that he may be summarily removed by a majority vote, does not imply that it is impossible for a minority still to control. The House of Representatives works to-day under the "caucus" system—that is, when the Speaker, or the committees, are to be elected, or united party action is desired on some great issue, each Representative attends a meeting (the caucus) of his party, with the understanding that all who attend shall be bound by the decisions reached at the conference. Needless to say, any action favored by the caucus of the dominant party is bound to be passed by their majority in the House of Representatives itself. In the caucus the majority rules. They may select their own candidates and commit the party to a programme distasteful to a large section of those present. Yet every one who, after attending the caucus, revolts from its decisions is apt to be "read out of the party." Suppose that a Representative knows that if he attends he will be pledged to a course of action he detests. What can he do? He may absent himself from his caucus and as a free lance or "insurgent" ally himself with those who stand for the action he favors. This is what a few men did in 1910. The success of their action in placing their duty to the country above strict party allegiance furnishes a hopeful precedent for the future.

TOPICS

Who is the present Speaker of the House? How long has he held the office?

What are some other important committees?

PART II.—EXECUTIVE ORGANIZATION

CHAPTER XXVII

THE PRESIDENT AND THE CIVIL SERVICE

THE executive branch comprises by far the larger part of the officers and employees of the United States government, including all except the members and employees of Congress and of the courts. The President is often spoken of as the Executive; this means that he is the head of the executive branch, and that all its acts are done in his name by virtue of the Constitution, which vests in him "all executive authority."

The executive branch consists of two parts, the President and Vice-President forming one, and all the rest (including the cabinet, the army and navy, the consuls and ambassadors, the postmasters, etc.) composing the other.

Of all the one hundred and twenty-seven thousand persons who comprise the executive branch, only the President and Vice-President are elected; all the rest are appointed, either by the President (with the concurrence of the Senate) or by persons (usually the heads of departments) authorized by Congress to make such appointments.

The President.—Under the Articles of Confederation, there was *no* single Executive; Congress both made the laws and executed them by its own officers. When the Constitution was framed, the convention decided unanimously that there ought to be a single Executive, but the members differed widely in regard to details. As first

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agreed to, the Constitution provided that the President should be elected by Congress, should hold office for seven years, and should not be re-elected. It was only, so to speak, at the last moment that it was decided that the President should be elected by the states, should hold office for four years only, and should be eligible for re-election. This, with minor alterations adopted seventeen years later (in 1804) as to the method by which the states should cast their votes, is the present plan.

The qualifications of the President are few and positive. He must be at least thirty-five years of age and a "natural-born citizen" of the United States, or a citizen at the time the Constitution was adopted. A naturalized citizen cannot become President.

The President receives a salary, which is now fixed at seventy-five thousand dollars a year, and allowances which vary from year to year.

Electors.—The President and Vice-President are elected, not by the people but by the states, each state casting as many votes as it has Senators and Representatives in Congress. As each state has two Senators and at least one Representative, no state casts less than three votes for President.

These votes are cast by "electors," who are chosen by the several states by whatever method its legislature may decree, except that Congress may prescribe (and has prescribed) the date on which the selection is to be made. As a matter of fact, electors have been chosen by the state in four ways: (1) by the legislature by joint ballot; (2) by separate vote of the two houses of the legislature; (3) by popular vote by districts; and (4) by a general state vote. Selection by districts approaches more nearly a popular choice, and as late as 1828 about one-third of the states followed that method; but as it resulted in breaking up the state vote, giving some of its votes to one candidate and some to another, it was gradually abandoned. Since 1872 all the states (except Michigan, which followed the district

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system from 1891 to 1893) have chosen their electors on a general ticket.

The system of electors, which often results in the election of a President who has much less than a majority of the popular vote, has often been characterized as useless and foolish, but it is really neither. The Union is a union of states, and the states wanted to choose the President; not a single member of the Constitutional Convention even proposed that the President should be elected by the people; the only contest was whether he should be elected by Congress or by the states. If the states are to elect, what more natural and flexible means could be devised than that they should cast their votes by means of delegates? When it is once understood that the President is chosen by the states and not by the people, the system appears entirely reasonable.

Any one (man, woman, child — native or foreigner) may be an elector; the only restriction is that no one can be an elector who holds any office of profit or trust under the United States. When chosen, there is no legal obligation resting on any elector to vote for any particular candidate, and there is no legal reason why electors chosen by a third small political party should not vote for the nominee of one of the great parties, perhaps giving him the victory. The restriction is entirely a moral one; however, it is potent.

Electors do not meet in national convention. They meet in separate state conventions on the second Monday in January, cast their votes, and prepare three certificates as to the result. One is sent by messenger to the President of the Senate at Washington; the second is sent to him by mail; and the third is given to the judge of the district in which the electors meet. On the second Wednesday in February the Senators assemble with the Representatives in the hall of the House of Representatives to count the votes; the President of the Senate opens and announces them, and hands them to the tellers to be footed up. All

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this has become a mere form; the result of the election is, of course, known long before.

By the Constitution, as originally adopted, the candidate who received the largest number of electoral votes for President became President, and the candidate with the next largest number became Vice-President. This usually resulted in the choice of a President and Vice-President belonging to *different* political parties. It was possible, too, under the first form, for a candidate for Vice-President to defeat the candidate for President; and, in fact, Burr came very near defeating Jefferson for the office. This was changed by an amendment (the twelfth) to the Constitution.

Elections by Congress. — To be elected, a candidate must have a majority of all the electoral votes. If no one receives such a majority, the House of Representatives chooses the President by ballot from the *three* candidates having the most votes. The *state* idea is carried out, however, for the members of the House vote, not as individuals but by the states, each state having one vote. In such an election New York and Nevada, for instance, would stand on an equal footing. Naturally such an election might easily result very differently from the ordinary one by electoral votes where each state has weight nearly according to its population.

Jefferson was elected by the House, Jackson defeated, yet each was undoubtedly the choice of the states, both electorally and popularly. At all the elections but one held since 1872 the electoral college has been divided between two parties, and there has been no possible chance for the House to act. In 1892 Cleveland (Democrat) had two hundred and seventy-seven votes, Weaver (Populist) twenty-two votes, and Harrison (Republican) one hundred and forty-five votes. Cleveland had a majority of the whole, and was elected.

Disputed or double electoral votes must be settled by the states casting them according to their respective laws.

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The Constitution gives the state legislatures full control over the choice of electors, and Congress will not "go behind the returns" and examine into the honesty of the election.

In case no candidate for Vice-President receives a majority, the Senate elects from the two having the largest number of votes. As each state is equal in the Senate, there is no need to prescribe that the voting shall be by the states. If the election of a President devolves on the House of Representatives, and if that body becomes "dead-locked" and fails to choose a President by the fourth of March following the election, the Vice-President *chosen by the Senate* becomes President.

Only one Vice-President, R. M. Johnson, has been chosen by the Senate.

The Presidential Succession.—In case the President dies, resigns, or becomes unable to discharge the duties of the office, the Vice-President succeeds. If the Vice-President in turn fails, the members of the cabinet succeed in the following order: State, Treasury, War, Attorney-General, Postmaster-General, Navy, Interior.¹ If the Vice-President succeeds, however, he holds till the end of the four-year term for which the President was elected, while if a cabinet member succeeds he holds only till a new President can be elected.

Removal of the President.—The President can be removed from office only by impeachment and conviction of high crimes and misdemeanors. Only one President, Mr. Johnson, has ever been impeached, and he was acquitted (see pages 166, 173).

The Civil Service.—The rank and file of the executive branch are all appointed, not elected. The Constitution

¹ From 1792-1886 the President pro tem. of the Senate and the Speaker of the House stood next in line to the Vice-President. The succession was changed, however, to prevent the possibility of a President being succeeded by a person of another political faith than his own.

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says that "ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States" not otherwise provided for, shall be nominated, and "with the advice and consent of the Senate" shall be appointed by the President, except that Congress may vest the appointment of "inferior officers" elsewhere.

Generally speaking, the President appoints (besides the justices and certain other officers of the United States courts): (1) heads and assistant heads of departments and a few high bureau chiefs like the Director of the Mint, Commissioner of Corporations, Civil Service Commissioners, Interstate Commerce Commissioners, etc.; (2) postmasters whose salaries are more than one thousand dollars a year; (3) officers of the army and navy; (4) ambassadors, ministers, and consuls; (5) governors and high officials of territories, colonies, etc.; (6) a few miscellaneous officials, generally of little importance. All such appointments are supposed to be made with "the advice and consent of the Senate."

Heads of departments stand at the top of the rank and file of the executive branch. The Constitution, though it mentions them, nowhere provides for their appointment, leaving this to Congress. Together they constitute the President's "cabinet."

"Inferior" officers are almost universally appointed by these heads of departments. At one time these heads had almost absolute control over their subordinates, appointing and dismissing at will. Nowadays, however, this power (except that of the Postmaster-General over postmasters) has been greatly modified by the workings of the civil-service law.

Advice and Consent of the Senate.—This amounts to "consent" only. The President may advise with certain *Senators* if he sees fit, but he never advises with the *Senate* as a body. He sends "nominations" to it in writing, and the Senate either "confirms" or "rejects" them. If it

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confirms them, the President issues a "commission" to the official. If it rejects them, the President may nominate some one else, whose nomination must be confirmed or rejected in the usual way. In its action on appointments the Senate acts as part of the Executive, and not in its usual capacity as a lawmaker.

If a vacancy occurs during a recess of the Senate, the President may "commission" some one to fill the place until the *end* of the next session of the Senate. This permits the selection of some one to discharge the duties of the place while the Senate deliberates over the confirmation of a permanent officer, who may or may not be the temporary appointee. If the Senate fails to act on the nomination of the successor, or if it rejects the nominee, there is precedent for the President reappointing the same man after the adjournment of the Senate, though it is pretty well agreed that he ought not to do so.

Civil-Service Law.—The civil-service act was adopted in 1883, and has never been amended. Although its friends admit that it is imperfect, they have not ventured to submit amendments to it for the action of Congress, fearing that if the subject is once taken up the present law (whose potency few recognized when it was adopted) might be either emasculated or repealed altogether.

Under the law, department heads are required to fill vacancies by appointment from the lists of "eligibles" prepared by the Civil Service Commission. These lists are made up by examinations, either educational or non-educational (as in the case of trades). On demand of the department head the commission submits the three names highest on the list, from which the appointment must be made unless the appointing officer has some special reason for believing that none of the three is adapted to the place; in such case three other names may be called for, and so on. As a matter of practice, the appointment is

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almost always made from the first list of three and is usually given to the highest on that list.

Appointments are required to be distributed among the various states in proportion to their populations, but in practice this is a very different thing to bring about. People from California, for instance, will not go all the way to Washington to fill minor posts, because they can do better at home; and the same is true in a lesser degree of less distant states. Accordingly, the states nearest Washington have received appointments much in excess of their "quotas" while those far away have less. Furthermore, many employees who are credited to other states are really residents of Maryland, Virginia, or the District of Columbia; people who have gone to Washington to live have usually continued to claim a "legal" or voting residence in some other state, and (if appointed to office) have been appointed as from that state, although they may not have been in it for years. A law enacted in 1909 tends to break up this practice by providing that appointees must have resided for the year immediately preceding their appointment in the state where they claim residence, and must take their examinations in that state.

The civil-service act puts the whole matter in the hands of the President. He is given authority to "classify" the employees in any part of the executive branch, and to extend to them the protection of the act. President Arthur issued the first of such orders, and later Presidents have added to them, until to-day practically all officers whose appointments do not require the concurrence of the Senate are subject to the law. Any President can revoke either his own orders or those of any preceding President, and restore the old state of affairs; but none has ever done so, except as to a few particular offices where the law was found to apply badly.

Removals.—Removals may be made very readily. All executive officials, including superior officers subject to confirmation by the Senate, may be removed by the President

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at his pleasure. The Constitution, however, is not plain on that point. In 1789 Congress decided that the Senate had no authority over removals; in 1867 it reversed this decision, adopting an act that required the President to report to the Senate his reasons for removal, and requiring its concurrence to make the removal valid. (It was for violating this law that President Johnson was impeached in 1868. He was, however, acquitted.) This act was repealed twenty years later, and the whole matter put back to where it was from 1789 to 1867.

Officers of the army and navy may not (since 1832) be dismissed in time of peace, except by verdict of a court-martial.

Inferior officers may be removed at pleasure by the heads of departments, but the cause must be stated. As their places can nowadays be filled only under civil-service provisions, they are seldom removed for political reasons.

TOPICS

What do you think would be the advantages of a longer tenure of office for the President with no re-election, compared with our present method?

What Presidents have been elected by less than a majority of the popular vote?

What are the arguments for and against electing the President by popular vote?

What Vice-Presidents have become Presidents, and under what circumstances?

Who are the people who object to the civil-service act, and want the old system again?

As there are about three hundred thousand positions to be filled by appointment, how could the President manage without civil-service regulations, and what would be the result?

PART III.—JUDICIARY ORGANIZATION

CHAPTER XXVIII

ORDINARY COURTS

Courts.—The judiciary branch consists of the Supreme Court, which is provided for in the Constitution, and of certain inferior courts that have been established by Congress.

In its organization and composition the judiciary is subject to both the Executive and the Congress. Congress establishes the courts (except the Supreme Court), and the Executive appoints the judges. But once established and the appointments made, neither the Executive nor Congress has any further authority over them, unless the appointees so misbehave as to render themselves liable to impeachment for "high crimes and misdemeanors." The Constitution makes the judiciary as independent as it possibly can, in order that it may really as well as verbally be co-ordinate with the other two branches of the government.

Congress has altered the organization of the judiciary branch from time to time, changing both the grades of courts and the numbers and grades of the judges to keep pace with the needs of the country. In 1910 there were nine Supreme Court justices, thirty-one circuit judges, and eighty-eight district judges. The Supreme Court justices sit together in court in Washington, and they also sit in "circuit" with two or four of the circuit judges; each circuit comprises several states. District judges sit separately; they have jurisdiction over smaller areas; over a

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whole state if small, but usually only over part of a state.

The judiciary branch also includes a Court of Claims, which considers claims against the government, a Court of Customs Appeals, and the courts of the District of Columbia. Territorial courts are not considered to belong to the United States judiciary system, but to the territories, as state courts belong to states.

Judges.—United States judges are nominated by the President and confirmed by the Senate, but once appointed they cannot be removed during good behavior;¹ that is to say, they can be removed from office only by impeachment and conviction. Since the foundation of the government five judges have been impeached, and two have been convicted. (See page 173.)

Congress also fixes the salaries of judges, but these when once fixed may not be diminished "during their continuance in office." A judge's salary cannot be reduced, for the risk of reduction might make him subservient to Congress; the salary of his successor, however, may be fixed at a different figure if Congress considers the change advisable.

Since by the Constitution judges may hold office practically for life at large salaries that cannot be diminished, they are subject to the temptation to remain at work after their mental and physical faculties have begun to fail. There were many instances of this in the early years of the Constitution. To prevent it so far as possible, Congress in 1869 adopted an act providing that any United States judge who had held his commission ten years and had become seventy years of age could resign and receive full pay for life. Since then there have been many such "retirements."

Officers.—The officers of the United States courts are attorneys, marshals, reporters, and clerks. The attorneys

¹ A different plan has been adopted in the states, in most of which the judges are *elected*, and hold office not for life but for a specified term of years.

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and marshals are appointed by the President and Senate; the other officers are appointed by the courts themselves.

The reporter keeps the record of the opinions of the courts; in the higher courts the opinions are published from time to time. The clerk keeps a record of the proceedings, has charge of money paid in, issues subpoenas to witnesses, etc. The marshal (or sheriff in state courts) serves subpoenas, makes arrests, executes judgments, etc. The attorney represents the government (the people), investigates charges, and prosecutes cases against offenders.

Juries.—Juries are of two sorts—grand and petit. The grand jury usually consists of twenty-three men; it investigates supposed offences, and if the *majority* of it sees fit, brings indictments, charging suspected persons in formal language with certain offences. The petit jury numbers twelve; it tries both civil and criminal cases, and generally can render judgment only by unanimous agreement. (Some of the states allow a verdict to be rendered by a divided jury; in Oklahoma, for instance, three-fourths of the jury may render judgment in all civil cases and in all criminal trials for offences less than felony.)

In all criminal cases the accused is entitled: (1) to a speedy trial by an impartial jury of the state and district where the offence was committed; (2) to be informed of the nature and cause of the accusation; (3) to be confronted with the witnesses against him; (4) to have compulsory process to compel the attendance of witnesses in his favor; and (5) to have counsel. Once acquitted, he cannot be again tried for the same offence.

The first three of these are ancient English rights, dating back to the days of Magna Charta; the next two—the right to counsel and to compel the attendance of witnesses for the defence—were granted only in 1688. Nowadays the court always provides counsel for a prisoner if he is unable to employ it.

These rights obtain only in time of peace; in time of war they may all be suspended (see pages 116-117).

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In the United States courts all issues of *fact* in civil cases, as well as *all* criminal cases, must be tried by jury. Civil suits in which the facts are admitted and only the *law* is in dispute may be determined by the court alone. No fact once decided by a jury can be reversed except by another jury; a higher court can declare that the *law* has been wrongly applied, in which case it grants a *writ of error*, instructing the lower judge to change his decision; or it can grant a *new trial* at which the facts can be re-examined; but it cannot itself question the *facts* as found. An *appeal* permits a new trial by a higher court.

While the jury system does not always work as well as it did in early days, there seems little reason for the severe criticism that is often passed upon it. Before the newspaper habit became so strong, it was comparatively easy to find twelve jurors who knew practically nothing about the merits of a case and who could render unbiassed judgments; undoubtedly this is not easy nowadays in cases that are of great interest to the community. Entire ignorance of such cases usually bespeaks, not impartially, but ignorance and stupidity. But, after all, there are few such cases. Few men not connected with the courts in some capacity have any knowledge of five, or even three, cases that are pending in their own neighborhood. The fact that the whole United States is acquainted with one particular case does not mean that anybody outside of those interested is acquainted with nine hundred and ninety-nine others. Usually it is not so difficult to get an intelligent jury as some people think.

TOPICS

What are some present disadvantages of the jury system that it did not have in the early days of the republic?

Is election or appointment of a judge better? State the reasons.

What are the advantages of a circuit court over a stationary court?

CHAPTER XXIX

COURTS OF IMPEACHMENT

THE highest court of the United States is not a permanent one, nor, strictly speaking, is it a part of the judiciary branch. It is a court convened on special occasions to try impeachments brought against high officers of government. In it the Senate, sometimes presided over by the Chief Justice, sits as jury, while the House of Representatives appears (by a committee) as prosecuting attorney. So specialized is its jurisdiction that only eight times in the history of the United States has it been convened.

The impeachment of an officer of the government is much like the indictment of an ordinary person. The charges against the offender are first considered by the House of Representatives, which acts as a sort of grand jury to consider whether they are such as to warrant further action. If the House thinks that they are, it impeaches (indicts) the accused, making specific charges against him corresponding to the counts in an indictment. These it sends to the Senate, at the same time appointing a committee to support them. Without this preliminary action by the House of Representatives, the Senate cannot try an offender.

On receiving the charges the Senate forms itself into a court. All the Senators take a special oath to judge the case honestly—that is, without prejudice. The Vice-President presides unless the President of the United States is on trial, in which case the Chief Justice presides, as the Vice-President might be tempted to use his influence to

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convict the President in order to succeed to his place. The trial proceeds much as it would in any criminal case, and the Senators, acting as a jury, finally vote as to the guilt or innocence of the accused. A two-thirds vote is necessary for conviction. (In Great Britain, from which this procedure was borrowed, the Commons indict and the Lords hear the case; only a bare majority is necessary to convict.)

Whatever the offence, the only punishment that can be inflicted is a political one. The Constitution says that conviction *must* cause the offender's removal from office, and that the Senate *may* also declare him incapable to hold any office of honor, trust, or profit under the United States. Further than this, punishment may not go. After the impeachment proceedings are finished, however, criminal prosecution in ordinary courts may be begun. For instance, if the Secretary of the Treasury stole government money, the Senate could remove him and disqualify him, and then the ordinary courts could try him in the ordinary way on charges of stealing. (In Great Britain, the House of Lords may inflict any punishment it sees fit, including confiscation of property, or even death.)

The Constitution is not quite clear as to who may be impeached. It says that all civil (that is, not military) officers of government may be, but it nowhere defines civil officers; and it is argued that members of Congress, for instance, are not "officers," and therefore cannot be impeached. The doubt is not so important as it seems, for a member of Congress can be expelled by a two-thirds vote, and can then be indicted in the ordinary courts, which is very nearly all that could be done to him by impeachment proceedings.

Only high officers of government are impeached; inferior ones can be dealt with more summarily. It is not necessary to call out a battery of artillery to kill a mosquito.

In our history there have been eight cases of impeachment. One, in 1797, was of a Senator (Blount, of Ten-

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nessee), who resigned before the case came to trial. Four were of judges (Pickering, Chase, Peck, and Humphries); the first three were charged with misbehavior, and the fourth with aiding the Confederate states. The sixth case was that of President Johnson, who was charged with violating the "tenure-of-office" act, which forbade the President to remove certain officers without the consent of the Senate (see page 166). The seventh was that of Secretary of War Belknap, who was charged with dishonesty. The eighth was that of Charles Swayne, judge of the United States District Court for the northern district of Florida, who was charged with several kinds of official dishonesty. Only two were convicted—Judge Pickering (who was insane) and Judge Humphries.

There have, of course, been many attempts to secure the impeachment of other officers, but these are the only ones that went to trial.

TOPICS

What special danger did the framers of the Constitution have in mind when they arranged for the impeachment of high officials? Has it been of great value?

Read the story of the impeachment of President Johnson. See *Reconstruction — Political and Economic*, by Prof. William A. Dunning; *A History of the American People*, by President Woodrow Wilson, and *History of the United States*, by Henry William Elson.

BOOK IV
STATE GOVERNMENTS



PART I—POWERS
PART II—ORGANIZATION

PART I.—POWERS

CHAPTER XXX

NATURE AND DISTRIBUTION OF POWERS

Nature of Powers.—In the United States Constitution the people granted to the national government certain powers considered by them to be general and national in character. In the various state constitutions they granted to the state governments certain other powers considered by them to be essential to good government. In both the national and state constitutions they reserved to themselves certain individual rights (see page 127), with which they forbade either the nation or the state to meddle. Except for these restrictions—in favor of the nation on the one hand and in favor of the people on the other—the states possess practically all governmental powers, and it is naturally far easier to explain what they may *not* do than it is to rehearse all that they *may* do. Nevertheless, certain of their chief powers may be pointed out.

(1) They impose taxes. Customs duties being reserved to the national government, state taxes must be raised in other ways. They may be either direct (as taxes on real and personal property), or indirect (as licenses to manufacture or sell goods).

(2) They create corporations, both private (such as ordinary business companies) and public (such as municipalities or city corporations).

(3) They regulate commerce within their own borders

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(intrastate commerce, this is called) so long as their action does not interfere with the rights of the general government over interstate commerce.

(4) They punish crimes and misdemeanors, except as restrained by the Constitution of the United States, which gives Congress authority over certain offences, and which provides that neither Congress nor the states shall make certain actions criminal, and limits the punishment they may impose for certain offences.

(5) They make laws in regard to labor. The national government has control only over its own employees and employees engaged in interstate commerce.

(6) They regulate marriage and divorce.

(7) They may establish "prohibition," though they cannot interfere with interstate commerce in liquor; that is, they cannot prevent the delivery within their borders of liquor bought outside and shipped in by freight or express.

(8) They may make laws to "conserve" the natural wealth of the state.

These are not all the things the states may do, but they are the most important, and they will be discussed in the following chapters.

Distribution of Powers.—The people of the states, like the people of the nation, have divided up the powers of government among the executive, the legislative, and judicial branches; they have, however, kept in their own hands, directly or indirectly, more power as concerns the state governments than they have kept as regards the national government.

Executive Powers.—The Governor, for instance, in few cases, has anything like the control over appointments that the President has. The people prefer to *elect* their servants wherever they can. United States judges, for instance, are appointed by the President (with the consent of the Senate), but state judges are universally elected by the people. In many states the Governor has not even the limited veto power on legislation that the President

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has. In other states he can grant pardons for offences only on recommendation of a board of pardons. In most respects, however, his powers are similar.

Judicial Powers.—State judges are not so independent as are national judges. In the first place, they are elected, not appointed, and must depend for their selection on the votes of the people. In the second place, they hold office for a term of years only instead of for life (as do the national judges), and can be punished by being defeated for re-election if their conduct has not suited the people. In some states their power to issue injunctions and to punish for contempt is limited (see page 128).

Legislative Powers.—The legislatures in most states are more restricted than is Congress, and in a few states are very much more restricted. Restrictions on the number of sessions and on the length of each session are common (see page 253); in a very few states only has the upper house any control over appointments to office; and state "bills of rights," forbidding interference with individual rights are, generally speaking, more comprehensive than is the national bill of rights (see page 127).

All law-making powers conferred by the Constitution of the United States are vested in Congress, and similarly in most states all law-making powers conferred by the state constitutions are vested in the legislatures. In a few states, however (Oregon and Oklahoma, for instance), this is not the case. In these the people have reserved to themselves the right to "initiate" a measure without waiting for the legislature to do it, and the right to veto any act adopted by the legislature if they see fit to do so. These two rights are known as the initiative and the referendum. Both of these have arisen from the very general distrust of legislatures and legislators (see pages 251-252).

Under the initiative, if a certain per cent. of the voters (eight per cent. in Oregon) petition that a certain law be enacted, such a law must be submitted to the voters of the state at the next general election. If a majority approve

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it, it becomes a law exactly as if adopted by the legislature.

Under the referendum, if a certain per cent. (five per cent. in Oregon) petition *against* a certain law that has *been* enacted by the legislature, that law must be referred to the voters; if a majority vote against it, it becomes void.

One form of the referendum has long been in vogue in the United States: the submission to popular vote of new constitutions or of amendments to old constitutions. The United States Constitution was not so submitted, but was adopted by the state legislatures, but with this exception submission has been universal.¹

In the five years that Oregon has had this system, fifteen laws have been adopted and thirteen defeated under the initiative; only one vote has been taken under the referendum, in which case the legislature was sustained. Oklahoma's experience has been still more brief.

Sufficient time has not elapsed to show how the system will work. Its friends claim that whether a legislative body is dominated by corrupt influences, or whether it is a typically representative body having the best interests of the people at heart, the initiative and referendum will serve as a check on it, preventing rascalities in the former case and correcting the errors of omission and commission in the latter. They urge that a legislature is more apt to enact laws in the interest of the people where it knows that if it fails to do so the people may themselves enact them, and that the knowledge that extravagant or corrupt legislation may suffer a popular veto is likely to make the most reckless and dishonest legislator hesitate to vote for it.

¹In Switzerland the referendum has long been in use. *Any* law adopted by the legislature must be submitted to the people on petition of a certain proportion of the voters, and *all* laws of a certain character (authorizing unusual expenditures of money, for instance) must be submitted *without* petition. The system has worked excellently over there.

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On the other hand, it is urged that the people, if clothed with these powers, are apt to run amuck against capital and "corporations," and to do great damage to their own welfare. So far, however, they have certainly not done so.

TOPICS

Is there any wide-spread desire to extend the use of the initiative and referendum into all the states?

Is there any reason why these should work better in the Western than the Eastern states?

What effect does the initiative and referendum have on the dignity of legislative bodies, and the sort of men sent to them?

CHAPTER XXXI

TAXATION

Government Income and Expenditure.—All governments must have money to meet their expenses, and all governments must obtain their money by taxing the people under them. Except in rare and temporary cases, no government has any money of its own, and all governments derive their money from taxes of one sort or another. These taxes may be indirect, and may be so imposed that those who pay them do so almost without knowing it, or they may be direct and burdensome; but they are taxes none the less. Every cent a government spends comes out of the pockets of its citizens; there is nowhere else for it to come from. Even the children really pay their share. Johnny Jones's father cannot buy him a new suit or a new pair of skates because his taxes were unexpectedly heavy.

A government's income differs radically in principle from an individual's income. When an ordinary man wants to buy something, he must first consider his income and decide whether he can afford it; he must suit his expenditures to his income, which is usually fixed. When a government wants to buy something, it estimates the cost and then sets about raising the necessary money; it suits its income, which is not fixed at all, to its expenditures. This encourages extravagance, and makes it very important that the people of a country should understand just how they are taxed and how the money taken from them is spent.

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Most people care little about the theory of taxation, but everybody wants to know how heavy it is going to be. Few people realize that a little study of the theory might result in making their taxes considerably lighter and certainly easier to be borne; for taxes are burdensome, not so much because of what they take as because of the way they take it. Nobody feels United States taxes, for instance, and yet they amount to about fifty dollars a year from every voter in the country. But every one does feel state and city taxes, although they seldom amount to anything like fifty dollars per capita. It's all in the way the thing is done.

Principles of Taxation.—Sensible taxation is based on a few principles which are so obvious that it is amazing how often they are disregarded or violated.

First, they should be equal. This does not mean that they should be like a poll-tax—so much for every person in the country, whether rich or poor, prosperous or unfortunate. It means that every one should pay according to his ability—in proportion to what he receives from the community. A rich man receives a great deal more than a poor man; he not only receives protection for his fortune, but he receives also the opportunity to make his money earn an income, and should pay accordingly. Yet under practically all existing schemes of taxation the man in moderate circumstances pays a good deal more proportionately than does the rich man, for the rich can dodge their fair share of the taxes (see page 188). The worst of it is the way in which the community looks upon this sort of thing; instead of treating a tax-dodger as a thief, most people consider any one who is not a tax-dodger to be a sort of fool. Really they are the fools themselves, for every dollar their neighbors dodge must come out of *their own pockets*. There is nowhere else for it to come from!

Second, taxes should be so levied as to yield as certain a return as possible. This, it is true, is rather for the sake

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of the government than for that of the taxpayers. The latter, however, suffer indirectly from any uncertainty. The returns from customs duties, for instance, are uncertain; they depend on imports, and if imports fall off customs receipts do the same, and the government must levy fresh taxes to meet its expenses; it never knows just where it is going to come out. Real-estate taxes, on the other hand, are definite; the government can tell almost to a nickel what they will yield, and will not (or ought not to) undertake costly enterprises in the hope that the revenues *may* provide for them.

Third, taxes should be as convenient as possible. Until quite recently most governments required taxes to be paid all in a lump, once a year, and this despite the well-known fact that it is infinitely easier for most people to pay five dollars or ten dollars a month than to pay fifty dollars or one hundred dollars a year.

Fourth, taxes ought not to be any heavier than is necessary to meet the needs of the government economically administered. If more money is raised than is needed it will be spent; if there is no longer real need for it some way will be invented; and an artificial need once invented is likely to be continued, and to *require the continuance of taxes to provide for it*.

Fifth, taxes should, if possible, be elastic; that is, they should produce revenue enough to-day to provide for the expenses of to-day, and as time goes on should naturally expand so as to provide for the expenses of the future. Such a scheme of taxation, of course, is not easy to contrive exactly, but it may be done approximately. A tax on the receipts of car lines, for instance, yields more and more money as the city expands. The same is true of a tax on city real estate.

Sixth, taxes should be as productive as possible. Some taxes are very hateful and yet yield small returns, while others are almost unnoticed and yet yield large returns. A tax on watches, for instance, is exasperating and not

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very profitable, while a tax on whiskey-selling is little felt and is tremendously profitable. There is no earthly use in making tax-gathering any more unpleasant than it must necessarily be.

Seventh, taxes should be levied with careful regard to their incidence; that is, with due consideration as to who will really have to pay them. A tax on mortgages, for instance, is paid by the owner of the mortgage, but its amount is often considered in fixing the rate of interest that is to be paid by the debtor. If the interest is increased on this account, the tax really falls on the debtor and not on the owner of the mortgage. If a tax on its gross receipts is collected from a street-car company, and the rate of fare is fixed (as it usually is), the company may yet shift the tax to the public by providing fewer cars and forcing people to stand up and yet pay.

Eighth, taxes should not be imposed on institutions that are *not* operated for profit and *are* operated for the benefit of the entire community. Churches, hospitals, public cemeteries, etc., should not, as a general thing, be taxed. Yet caution should be used in granting exceptions even of this kind, or such institutions may come to own enormous amounts of property which they do not use directly for religious or charitable purposes. The case is met in most governments by exempting from taxation property *used* for religious or charitable purposes.

Subjects of Taxation.—The United States government raises practically all of its money by means of customs duties and internal revenue taxes (see pages 29-30), which those who pay them promptly shift onto the consumer by adding them to the price of the goods. It takes no taxes *directly* out of the pockets of the people who ultimately pay them. The states, however, are not allowed to impose customs duties, and must resort to taxes on other things. In choosing among these others they have to remember that the county, township, and city governments must also raise money, and to confine themselves as far as

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possible to a few main heads, leaving the rest to the smaller governmental units.

Broadly speaking, there are eight subjects for state taxation: (1) general property, which consists of real estate (lands, buildings, etc.), and of personalty (horses, furniture, stocks and bonds, etc.). (2) Incomes, which may be derived from wages, rents, stocks, etc. (3) Corporations, which may be taxed on their organization, on their annual receipts, on their capital stock, or on the value of their property. (4) Licenses—hack licenses, peddlers' licenses, doctors' licenses, etc. (5) Fees, which are usually charged for the issuing of papers, the filing of deeds, etc. (6) Special assessments, as for improving a street, turning on the water in a house, etc. (7) Poll taxes—a direct charge on every person in the state. (8) Inheritances, on which taxes are usually graduated so as to tax remote heirs more heavily than near ones.

The general property tax is by all odds the most productive of all, and is levied by the state, county, township, city, and in some cases by other subdivisions as well. It is in two parts—real estate and personal property.

Real-Estate Taxes.—Each city has an assessor, or board of assessors, whose duty it is to place a "valuation" on each and every parcel of real estate in the city. To do this justly is no easy task. If the assessor values a two-thousand-dollar house belonging to Smith at three thousand dollars, and a two-thousand-dollar house belonging to Jones at one thousand dollars, he makes Smith pay three times the tax that Jones does on property of equal value. Hence all taxpayers possess the right of appeal against the accuracy of the valuation of this property, and may have it reduced if they can persuade the assessors that it is too high.

Real estate changes in value rather slowly as a general thing, and therefore it is valued only at considerable intervals, ranging from once in three years to once in ten or more.

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The city knows about how much money it must raise from real estate, and when it has ascertained through the assessor the value of the real estate subject to taxation, it can easily fix the "tax rate"—the rate at which its people must pay on their property.

So much for the city. But all except a very few cities in the United States also form part of a county. The county officers value the property in the county outside the city, add the total to the city valuation, and find the tax rate necessary to raise the money for *county* expenses.

Next comes the state. Commonly it adds together all the county valuations, and from them fixes the tax rate that will yield the money required for *state* expenses.

The taxpayer has to pay the amount called for by all three of these rates. Usually he pays it all to a single "receiver of taxes," who distributes it among the three forms of government.

Valuation is complicated by the fact that few states and fewer cities attempt to value property at its *true* value. Mostly they value it at a certain fixed percentage of its value. Chicago, for instance, values its property at only twenty per cent., or one-fifth, of the true value. Among states South Dakota does the same as Chicago.

In a single city it makes little difference at what per cent. property is valued so long as it is applied to all persons alike. A man who is taxed two per cent. on a fifty-per-cent. valuation pays exactly the same as if he had been taxed one per cent. on the actual value (one-hundred-per-cent. valuation). But if one city values at sixty per cent. and another in the same state values at thirty per cent., it needs no argument to show that unless adjustment is made the state taxes on the first city will be twice as heavy as those on the second. To rectify such injustices, boards of "equalization" are constituted, whose duty it is to see that different parts of the state bear their fair share of the burdens of government. Needless to say, their task is both difficult and thankless.

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Taxes on Personalty.—For taxes on personalty, which includes practically all property except real estate, a slightly different method is followed. Every person who owns personal property is supposed to make a written statement (sometimes a sworn statement) to the assessor every year setting forth the value of his personal property. Usually a certain amount of this (two hundred dollars' worth in Ohio, for instance) is exempt from taxation, and in some cases the owner may deduct his debts in stating the value of his property.

If the owner of property does not make a statement about it, the assessor may guess at the value of his property; or if he makes a statement that seems to the assessor too low, that officer may increase it. The taxpayer has the right of appeal as to the valuation of his personal property, just as he has in regard to the valuation of his real estate.

Obviously it is much more difficult to value personal property than it is to value real estate. Human nature being what it is, there are and always will be people who will make false returns of their property and evade as much of the tax on it as they can. This, of course, is stealing, and particularly mean stealing, too; but it is quite general, nevertheless, especially among those who can best afford to be honest. Men in moderate circumstances (farmers particularly) have most of their personal property in the shape of horses, tools, furniture, wagons, and the like—things that cannot very well be concealed. Rich men, on the other hand, have most of their property in the form of stocks and bonds and the like—things that *can* be very easily concealed. A personal property tax, therefore, really bears most heavily on those who can least afford to pay it. So much so is this the case, and so strongly does such a tax conduce to false swearing, that only the necessity of getting the money somewhere prevents its abandonment.

Income Taxes.—Income taxes are based on a man's income, whether derived from salary or wages, from rents, from business, from money lent at interest, from stocks and

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bonds, or other sources. Strong objection is made to it for several reasons: (1) because it is "inquisitional," compelling a man to expose his private affairs; (2) because it puts too great a strain on a man's honesty and offers too great a temptation to false swearing; (3) because in the case of rents, or mortgage loans, or stocks and bonds, etc., it often imposes taxes on things that have already been taxed, perhaps in other states; (4) because it bears most heavily on wage-earners, whose incomes are generally known and cannot be misrepresented. For these reasons it is seldom resorted to, and when it is, is usually levied by the state and not by the city or county.

Corporation Taxes.— Heavy license fees are often charged for creating corporations. New Jersey for years had a general incorporation law which charged enormous fees, but in return created corporations with powers that most people regarded as scandalous and that most states refused to grant. So great were the inducements offered by the state that companies from all over the Union sought it for incorporation purposes, and the fees paid a large part of the expenses of the state government.

Corporations may also be taxed on their annual business. A railroad, for instance, may be taxed on its earnings, or an insurance company on the amount of "business" it writes. Obviously this is a sort of income tax that applies only to corporations.

"Foreign" corporations (that is, companies incorporated in other counties or other states) may be required to pay heavy fees for the right to do business in a state. These fees, however, cannot be a percentage of their capital stock, for if they were they would amount to a tax on property outside the state and not owned by a citizen of the state.

Lastly, corporations may be taxed on the value of their property, including their "franchise," which is often by far the most valuable part of their assets. The rails, rolling-stock, etc., of a street railroad, for instance, may be

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worth a certain sum, and its right to use the streets may be worth two or three times as much.

Taxes on corporations are usually imposed by the *states* only, unless the corporations are obviously city ones. Thus railroads, insurance companies, telegraph and some telephone companies, great business corporations, etc., are commonly taxed by the state, while street-car lines, gas companies, local telephone companies, etc., are commonly left to the cities. There is, however, no general rule on the subject.

Licenses.—Licenses may be to keep saloons, for which a heavy charge is usually made, to peddle goods, to conduct theatres, to keep dogs, to conduct spiritualistic “parlors,” to build houses, etc. Mostly those sources of income are left to the cities, though not infrequently (especially in the case of saloons) the state also exacts its share.

Fees.—Fees are not always considered taxes. If they are only high enough to pay the cost of drawing or recording papers and the like, and if they go wholly to the man who does the work, they are certainly not taxes; but if they are much greater than is necessary to pay the cost of the service, and if they go to the state, they are taxes. New Jersey’s taxes for incorporating, for instance, are called “fees.” Fees may be exacted either by the state or the city or both.

Assessments. — Assessments are not exactly taxes, as they generally are only about high enough to cover the cost of some particular service, such as paving a particular sidewalk, laying a water-main in a particular block, connecting a new house to a sewer, and so on. They are levied almost exclusively by the city or the county.

Poll Taxes.—Poll taxes are usually state taxes. They are somewhat rare, except in the Southern states, where their payment is commonly made a prerequisite to voting. Road taxes are much the same sort of thing; they are taxes for keeping the roads in repair, and may often be paid in labor instead of in money (see page 195).

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Inheritance Taxes.—Inheritance taxes are levied by many states, and are becoming steadily more popular. The idea is that when a man inherits property he is able to pay well to the state, whose laws enable him to get and keep it (for inheritance is *not* a natural right, but strictly a legal one). Most states make wide differences in the rates of their inheritance taxes. Widows and orphans commonly have to pay little or nothing; brothers and other collateral kin have to pay more; remote relatives still more; and people not akin ("strangers to the blood") have to pay most heavily of all.

TOPICS

When the Constitution was framed, how did the wealth of the country compare with the wealth at the present time in amount and in character, and in proportion to population? How has the wealth of individuals changed?

In the early days of the republic, how fully did the general property tax conform to the rules for a sensible tax?

Take up each tax mentioned in this chapter, consider how far it conforms to the sensible tax rules, and arrange a system of taxation which would seem to you the best for your own state. Show this by a tabular arrangement also.

Why is an indirect tax a good thing for a tyrant to use, but a bad thing in a democracy?

CHAPTER XXXII

COMMERCE

Control of Commerce.—The regulation of commerce is steadily becoming more and more an affair of the nation rather than of the states. The scale on which trade is carried on to-day alone is enough to place it beyond the effective control of the states; and when proposed legislation for the national incorporation of large companies is placed on the statute-books, as it almost certainly will be before very long, little will be left for the states to regulate.

When, more than a century ago, the people granted the supervision of interstate commerce to the national government, they could have had little idea of the immense and far-reaching power they were conferring. Men familiar only with the slow-going methods of those pre-rail-road, pre-steamship days could not even have imagined the mighty commercial revolution that lay just ahead of them. They granted to the general government the control of commerce in order to put an end to the intolerable state of affairs that they had seen result from leaving it in the hands of the several states. Under the Confederation each state controlled all commerce within its own borders—imposed customs duties against other states as well as against foreign nations, and in many ways hampered trade. So vexatious were the restrictions that by common consent they were abandoned, and the whole matter placed in the hands of the general government. Fortunately the grant was put in such broad terms that it has been found to work well even under the changed conditions of to-day.

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Congress may not regulate *all* commerce, but only *inter-state* commerce. Consequently it is important to know just what is to be understood by "interstate" commerce. This, however, is very difficult to explain. The line between *interstate* and *intrastate* commerce (commerce inside a state) is by no means clear. For instance, the courts have decided that a state cannot establish tolls for the navigation of one of its rivers, though it may impose reasonable wharfage dues on vessels using it. It cannot tax the *business* of corporations engaged in interstate commerce, though it can tax their *property*. It cannot compel all trains to stop at county seats, but it can compel all engineers to submit to tests for color blindness. It cannot prohibit liquor from being shipped across or into it, but it can prohibit the sale of it after it gets there (see page 233). The exact line of demarcation is one for the courts to determine.

The right of Congress to control interstate commerce is, however, not construed to extend to far-fetched or trivial instances. A New York City ordinance requiring inspection of markets might easily add to the cost of food carried into New Jersey, but it would be nonsense to claim that such an indirect and remote influence made the inspection law a regulation of interstate commerce. Many state laws and city laws, even, that do directly affect interstate commerce are not considered a regulation of it in the meaning of the Constitution. A state, for instance, can collect reasonable wharfage charges from vessels navigating interstate rivers. Such laws fall within the *police powers* of the state, which are just as important to the states as is the commerce control power to the United States. When *properly exercised* they do not conflict with the powers of Congress. Just what constitutes "proper exercise" is often hard to tell, and must be decided according to the merits of each particular case (see further, under the national government, pages 57-60).

Most of the states have "railway commissions" which

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control railways and which in some cases are beginning to gain control of other public-service corporations.

New York, which has the most up-to-date laws on the subject, has two commissions—one for New York City and the other for the rest of the state.

The New York commissions have very great powers. Like other commissions, they can fix rates, but they can also (1) forbid the construction of new lines where they think that competition would be unnecessary or harmful; (2) forbid increases in capital stock; and (3) forbid one company to acquire the stock of another. The law was adopted in June, 1907, and has given very satisfactory results.

Means of Commerce.—Most of the means of commerce, such as railroads, wagon-roads, canals, etc., are supplied by the states. The Constitution gives Congress power to “establish post-roads,” but there is doubt whether this authorizes the mechanical construction of roads. Congress used this power twice for road-building purposes in early days (see pages 91-92), but both times with some doubt as to its right to do so, and in later years it has left the whole matter in the hands of the states.

Railroads.—No American state builds or operates railroads, though many European governments do so. This, however, is from no lack of power, but merely from policy. The state does, however, incorporate railway companies, and authorize them to use its power of “eminent domain” in order to acquire the necessary land for their rights of way. It is conceivable that a railway might buy a right of way across the country without exerting this right, and might even get into and out of certain cities without using or crossing their streets, but as a matter of fact they never do. The power to condemn needed lands hanging in the background enables the roads to buy the lands required for their purposes at reasonable rates, while the right to use or cross streets is usually obtained from the city gov-

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ernments, whose powers to grant it depend on the authority granted to them by the state legislature.

Canals.—Canals have been built in various ways. The Erie Canal was built by the State of New York. The Chesapeake and Ohio Canal was built by a private company authorized jointly by Maryland and Virginia, the stock being subscribed by both states and by the United States as well as by many private persons. The Illinois and Michigan Canal was built by a private corporation over a right of way granted by Congress, the lands traversed being at the time government property. In whatever way they were built, these canals were all constructed under authority granted by the state.

Wagon-Roads.—Wagon-roads may be built by the states themselves, or by counties, townships, or individuals acting by authority of the state. The necessary money is usually raised by special taxes or assessments imposed on people living along the road to be built, improved, or maintained. Over a large part of the United States these assessments are payable either in money or in *labor*, which may be rendered personally or by men hired or teams furnished by those from whom the assessment is due. Such a method, however, though satisfactory where ordinary dirt roads are concerned, does not work well with pikes, which call for special tools (as steam-rollers, etc.) and for skilled labor. For this reason the old "road-working" method is falling into disrepute, and the practice of collecting the tax in money and doing the work by contract is growing.

In some states pikes are built by private persons, who in return are granted power, usually for a stated term of years, to collect tolls from those driving over them. In other states convicts are used to do the work on the roads.

Wagon-roads are of great importance in state commerce, in which the hauls are usually short as compared to those in interstate commerce, most of which is done by rail-

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road. Good roads, accordingly, are very essential to the prosperity of a state.

Good roads, however, are costly both to construct and to maintain, and the states, generally speaking, have been slow to build them, either because they did not realize how very essential they were or because they needed all the available money elsewhere. Not rarely, too, roads have been and are being constructed without proper knowledge of correct mechanical principles, and along routes chosen more by political favoritism than by the best needs of the states.

Generally speaking, the kind of road it is advisable to construct depends on the amount of traffic it is likely to carry. A dirt road costs about three hundred dollars a mile to build and twenty-five dollars a year to maintain; a turnpike costs ten times as much both to build and to keep; a cheap railroad costs about one hundred times as much; and the finest sort of a railway about three or four hundred times as much. On the other hand, it costs ten cents to haul a ton for a mile over a dirt road; three cents to haul it a mile over a pike; one cent over a cheap railway; and one-fourth of a cent over a fine railway. These figures, of course, apply to ordinary country, neither especially easy nor especially difficult.

From these figures it is readily deduced that unless the traffic is likely to be more than one thousand tons a year a dirt road is sufficient. A pike would *save* seventy dollars a mile on that tonnage, but it would *cost* two hundred and fifty dollars a mile to maintain, let alone the interest on the greater first cost. But if the traffic will probably be ten thousand tons, a pike would save seven hundred dollars a mile on that tonnage and would cost only the same two hundred and fifty dollars to maintain, and so would pay very well. Similarly one hundred thousand tons a year would enable a railroad to pay, and one million tons would warrant the finest sort of a railway.

Each sort of road should, of course, have a network of cheaper roads to serve as feeders to it.

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Road-building is going forward at a tremendous rate all over the country nowadays. The State of New York has authorized a fifty-million-dollar state bond issue for the purpose, to be spent at the rate of five million dollars a year, on the understanding that the counties contribute an equal amount. Maryland has authorized a state bond issue of five million dollars. Pennsylvania has spent about seven million dollars, in addition to local funds, in the last few years. Massachusetts, Connecticut, New Jersey, and many other states have voted larger and larger appropriations, until the figures are now well into the millions. County bond issues are becoming general. Los Angeles County, California, in 1908, voted three million five hundred thousand dollars to add to a system of roads already far above the average, and the people are firm in the assurance that the tourist travel alone will repay the cost in a few years. Many counties in the South have within the last few years sold bonds to get money to pay for roads in amounts ranging from one hundred thousand to one million dollars.

In much of the United States, as in all comparatively new regions, roads are built to develop the country as well as to be immediately profitable. Without good roads settlement will be slow; with them it will be hastened. Therefore, it is not so much the immediate traffic that is to be considered as the traffic that may reasonably be expected within a few years. Obviously, looked at in this way, every proposed road must be considered on its individual merits.

TOPICS

State railway commissions were organized nearly twenty years before the Interstate Commerce Commission. What development does that indicate?

Can you give any pertinent statistics about railways in 1860, in 1870 when state railway commissions were organized, and in 1887 or later? See Coman's *Industrial History of the United States*.

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What modern factor is making for good roads all over the country?

Are the roads in your neighborhood well graded and cared for? Can you see that they help or retard the development of the region by their condition?

Is the cost of maintenance provided locally or are some of them "state roads"? If so, why does the state consider it important to keep them in better condition than the neighborhood itself could keep them?

Did you ever see a toll-gate? What was it for?

CHAPTER XXXIII

CORPORATIONS

Nature.—A corporation is an artificial person, created solely by law. It is a union of many natural persons formed for the purpose of using a portion of the money of each to carry on some enterprise for the joint profit of all. Combining, as it does, the wealth of many individuals, a corporation is naturally richer and stronger than any single individual, and even than a large number of individuals whose wealth is not combined. If its wealth be used for evil, and if it be not restrained by something more powerful than itself, it can, solely by means of this combined wealth, overwhelm and crush most individuals who get in its way. For this reason the law that has created it, and has enabled it to combine the wealth of many into a single fund, has always claimed the right to limit its acts in such ways as may seem necessary to prevent it from using this wealth to harm individuals—especially as it is these individuals who, combined in the legislature, have created it and given it the right to combine the wealth. This is why corporations are everywhere treated by the laws in a very different manner from individuals.

A *partnership* is not a corporation. A partnership is an association of persons, while a corporation is a union of property. Partners usually give their services to the “firm,” and they are supposed to exercise personal supervision over all its acts; each of them is liable for all the acts and all the debts of the partnership. Corporations, on the other hand, are mere unions of money; their members

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seldom know or can know much about the acts of the company, and they are not liable for them nor for the company's debts except to the extent of the money they have put in (or in some states to twice this amount).

A corporation in its simplest form is an association of individuals formed to carry on some sort of business. The value of this business is fixed at some definite sum, which is called its "capital stock." *Nominally* this capital stock is a fair valuation of the business; *actually* it is seldom anything of the sort, usually being far in excess of any fair valuation.

The capital stock is divided into "shares," each of which has a "par value," usually ten dollars or one hundred dollars. These shares are distributed among the "incorporators" (those who form the corporation), in proportion to the amount of money each puts in or agrees to put in when called upon to do so—for the capital stock is often not "paid up" in cash at the start.

Shares are transferable, and are freely bought and sold, the purchaser succeeding to all the rights of the original holder. The price is, of course, a matter of agreement; it is not affected by the "par" value except in so far as seller and purchaser believe that the original valuation was a fair one.

The holder of a share or shares is entitled to vote at an election, usually held yearly, for all or a part of the members of a "board of directors," who employ all the officers and direct all the affairs of the corporation, either personally or through those officers. *Between* elections the individual shareholder has no power over the acts of the corporation, and *at* elections he can only effect them by persuading other members to join with him in electing a board of directors who will do as he wishes. Unless he can muster a majority of all the stock voting he is powerless, even though he may own forty-nine per cent. of the entire capital stock. In many states he may even be denied all knowledge of the operations of the company.

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The earnings, if any, of a corporation are supposed to be divided up among the shareholders from time to time in the form of "dividends," but in many states there is little to prevent a corrupt board of directors, controlling a bare majority of the stock, from paying to themselves, under guise of salaries, money that should really go toward dividends, or from making with themselves *under another corporate name* dishonest contracts designed to wipe out all possible profits. Such acts, if detected, are of course punishable, but they are very easy to commit and are very hard to detect.

Control.—Corporations, as they exist to-day, were little known and less considered when the Constitution was adopted, and perhaps naturally were allowed to pass without special attention in that document. Those that did exist were chartered by the states, at first under special acts and later under general laws. The national government, although it possessed and has asserted the power to create corporations (as witness its chartering of a Bank of the United States more than one hundred years ago), has never passed a national incorporation act, and for many years left both the creation and the control of corporations to the states.

National control had its birth in 1863, when the Federal government took control of the banking system of the country (see page 43) by granting certain privileges to banks that complied with certain conditions, and by placing a tax on state bank-notes that drove that unreliable form of currency out of existence. Next came the interstate commerce act (see page 71), and later the anti-trust and other acts (see page 88), by which the national government sought to control corporations engaged in interstate commerce. Last of all came a clause in the tariff bill of 1909, imposing a tax on the net earnings of corporations engaged in interstate commerce, which necessarily carries with it the right to inquire into the business of such corporations so as to make sure that the tax was collected fairly.

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The next step is likely to be a national corporation act; such an act could not *forbid* state incorporation, and it need not even provide for *national* incorporation; it would be extremely effective if it merely forbade any corporation to engage in interstate commerce unless it submitted to certain conditions; for instance, to supervision of its issues of stock and payments of dividends. President Taft, early in 1910, urged Congress to pass a *permissive* national incorporation act, of which corporations engaged in interstate commerce could avail themselves if they so desired.

Development of Corporations.—The modern development of corporations has removed them, in fact if not in law, from the control of the states. This has come about from four different sets of causes: (1) from the enormous wealth and wide interests to which some corporations have attained, making them too powerful to be controlled by any state; (2) from the proneness of some states, through ignorance, carelessness, or downright dishonesty, to endow corporations with power to prey upon the rest of the Union; (3) from the growing need of publicity in regard to corporation values; and (4) from the wide scattering of corporate property, and the importance of controlling this by national laws and not by those of the one state of incorporation.

The growth of corporations is, of course, at the bottom of the trouble. As long as these did business for the most part only in the states that created them, the danger of miscellaneous creation by so many different legislatures was minimized; but when they began to cross state lines and carry on operations in other states, the matter began to grow serious, and the people began to call for protection on the national government, which alone was big enough to handle the monsters effectively.

The recklessness of much state legislation added strength to the outcry. Many legislatures looked upon their right to create corporations chiefly from a monetary or a partisan point of view. New Jersey, for instance, went deliberately

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into the business of creating corporations with practically any sort of powers, provided the incorporators could pay the heavy fees demanded. So "liberal" were her incorporation laws that men with shady schemes swarmed to her from all over the Union, pouring fees into her coffers in amount great enough to pay a large part of her state taxes. Pennsylvania had already gone New Jersey one better, however, in creating corporations with powers to do certain things anywhere except in Pennsylvania; that is, she created corporations and gave them permission to do elsewhere things that she forbade them to do within her own boundaries.¹

The result of these outrageous grants of power was that corporations, being—as Blackstone puts it—without either a body to be kicked or a soul to be damned, were able in many cases to evade or defy the laws with absolute impunity.

On the other hand, populistic legislatures have again and again passed "trust-busting" laws which have caused wide-spread ruin to corporations and have in consequence set back the prosperity of the state very materially. Corporations are an essential factor in modern business, and should be regulated and not destroyed.

Public knowledge as to corporate values is becoming daily more necessary. In most states there is no adequate machinery by which the public can get any idea of the real value of the stocks that it is asked to buy. It must take the estimates of the sellers or must let the thing alone altogether. A hole in the ground in southern Nevada may be bought by a company for one hundred dollars and promptly incorporated for one million dollars, and the entire stock sold without the slightest evidence that there is anything whatever in the hole—and without the men who sold the stock and got the money incurring any legal risk

¹ Some states refuse to permit such corporations to do business within their borders, holding that they are illegal, illegitimate, and piratical.

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whatever, unless it can be proved that they knew the mine was worthless. Ordinary fraud is severely punished by all states, but extraordinary frauds such as these continually go unwhipped of the law.

Few states attempt either to limit the original capital stock with which a company is organized or to supervise any later increases. Apparently they take the position that this is a private matter between the company and its shareholders instead of being—as it is—a most effective means of perpetrating fraud.

At first blush it may seem of little importance for how much a given property is “capitalized.” If a factory is worth one million dollars, it seems to make slight difference whether it is represented by ten thousand, or one hundred thousand, or one million shares of stock. The more shares the less will be the value of each. A company may capitalize a million-dollar plant at ten millions, but if it does its shares ought to sink, and do *ultimately* sink to about one-tenth of their face value.

Unfortunately, the public does not know that the plant is worth only a million, and it often buys the shares from those who do know that fact at considerably more than one-tenth of their face value. Then when the inevitable drop comes the public loses its money, and the “insiders” get it. The public cannot distinguish between stock that is based on real value and stock that is based on “water.”

For this reason a growing number of states insist on publicity, so that the public may know what it is buying before it puts its money in. Massachusetts requires full publicity from all her corporations; restrains stock “watering”; and altogether does enable one to get an idea as to value. New Jersey restricts the *publicity* it requires to the *stockholders* of the company; a man has to invest in a company before he can demand information as to its affairs. Some states do not do even this; they interpose no objection to a faction getting control of a company and refusing all information to the other stockholders.

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The wide distribution of corporate property and corporate stockholders has created a condition that bears most unfairly on the latter. Nowadays a corporation formed, say, under the laws of South Dakota, may have stockholders in every state in the Union; yet in all *internal* matters (that is, in all matters that exclusively affect the relation of the corporation to the shareholder) the courts and laws of South Dakota will have exclusive control. Many, if not most, of the great companies located in New York City were created by New Jersey, and New Jersey laws and courts control. A corporation created in South Dakota and owned chiefly in New York may have *all* its property in California. Yet if it defaults on the payment of its bonds its New York bondholders cannot foreclose on its California property except by order of the courts of South Dakota.

For all these reasons the tendency of the times is toward a greater national control of corporations, especially of those engaged in interstate commerce (which, of course, does not include railways alone, but all sorts of corporations).

TOPICS

Mention some corporations that you know about, and tell what you can about them in regard to capital stock, value of shares, market price of shares, number of shareholders, time and place of holding elections, whether incorporated in your own state or another, etc.

What is the character of the laws of your state in regard to corporations?

Is there a tendency toward greater uniformity in state laws on this subject or away from it?

A state with lax corporation laws receives revenue on that account that makes local taxation low. Are there disadvantages for the state? If so, what?

CHAPTER XXXIV

PUNISHMENTS

STATES may punish all infractions of their own laws, and as they may make laws on most subjects their power to punish is very wide. Counterfeiting, smuggling, and "moonshining" are offences against the United States (see pages 115, 117), but almost all other ordinary offences are offences against the state in which they are committed and are punishable by it. The states decide what actions shall be considered offences and what penalties shall be imposed for their commission.

Offences.—Offences are felonies or misdemeanors. Roughly speaking, felonies are grave offences punishable by death or imprisonment in the penitentiary. The term, however, is very vague, and scarcely admits of definition except by enumeration of the particular offences which the law has declared to be felonies—a definition which would differ in every state. Misdemeanors are small offences, usually punishable by fine or confinement for a certain number of days in an ordinary jail. In many states (and in the United States) conviction of a felony works a forfeiture of civil rights—the right to vote, hold office, and so on. These can be restored only by a pardon.

Crimes are not necessarily offences against morality. All states (and the United States) declare many acts to be criminal despite the fact that they are not wrong in themselves. The United States, for instance, declares that to bring dutiable articles into the country without paying duties (smuggling) is a crime; yet this is not wrong in

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itself, but is wrong only because it is made so by law. Similarly, states make many things criminal that would not be so except for the law.

New York, for instance, makes it criminal to run a horse-race within a mile of where a court is sitting; to to keep a slot-machine; to conduct a store without seats for women employees; to board a freight-train while in motion. Although it is natural that the laws of each state should vary as the character of their populations, there is in certain respects an undesirable lack of uniformity. "Subject to a few limitations contained in the Constitution, each state can play whatever tricks it pleases with the law of family relations, of inheritance, of contracts, of torts, of crimes" (Bryce, I., 346). Fortunately, since the law of all states save Louisiana is based on English common law, the divergences are not so great as one might expect, yet they are often very confusing.

Penalties.—Punishments may be imposed by the state except as restricted by their own constitutions or by that of the United States. Besides specific constitutional limitations on the power to punish, the states are restrained by the broad provisions of the United States Constitution that no bill of attainder (laws inflicting punishment without trial) or *ex post facto* law (law making an act criminal that was not criminal when committed) shall be passed. Further, although the state legislatures may declare what shall be considered offences and what penalties shall be imposed for committing them, no individual can be subjected to those penalties except on trial and conviction by a court. State constitutions protect any one, once acquitted, from being tried again for the same offences (see page 133).

Object.—The object of punishments is to deter people from breaking the law. This may be done (1) by making them so severe that no one will dare to incur them, and (2) by making them such as to reform offenders and cause them to cease their offences. The object, however, is

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primarily to deter and not to reform. If it were to reform, there are lots of law-abiding people who would have to be punished. This fact is often forgotten by would-be reformers, who seek to rob punishment of its terrors by all sorts of alleviations that to some people make it really a reward instead of a warning. Society seeks to attain its ends by graduating the punishment as well as it can to fit the crime, and then by leaving to the judge or the jury a certain degree of discretion in inflicting it.

TOPICS

What cruel and unusual punishments were in existence in colonial times.

What is the difference between a jail and a penitentiary?

Who has the right to pardon in the Federal government and in the state?

CHAPTER XXXV

LABOR IN GENERAL

THE states have entire control of laws concerning labor. All that the national government can do is to set a good example by paying liberal wages, exacting only reasonable service, making the conditions of work of its own employees as pleasant as possible, etc. In some respects Congress has done this; in other respects it has fallen behind both the states and the greater part of the world.

In one way labor is a commodity, just as beef is. The purchaser wants to buy it as cheaply as he can; the seller wants to sell it as dearly as he can. In another way, labor is more than a commodity, because it involves the welfare of men, and is subject to many limitations to which ordinary commodities are not liable.

Labor may be considered under several heads: (1) the wages to be paid; (2) the work to be done; (3) the physical conditions under which the work is to be done; (4) the liability for accidents; (5) the laws of warfare (that is, the right of the public through the courts to limit labor and capital from battling too furiously).

The Wages to Be Paid.—In the matter of wages the employer generally has the advantage, because in order to become an employer he must have some capital on which he can live at a pinch, and is therefore not in such pressing need of immediate work as is the employee. He can afford to wait until the would-be workman gets hungry enough to accept his terms, or until another workman comes along who will do so, and from the workman's point of view he does this whenever he has the power.

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On the other hand, the labor union is a combination or a monopoly of workmen with the declared object of making the employer pay "fair" wages for a "fair" amount of work. As the meaning of "fair" varies according to whether the employer or the employee has to define it, the labor union has come to be a combination which is really trying to make the very best terms it can for its members, just as the employer makes the very best terms he can for himself.

(This is true of the professions as well as the trades. The lawyers' and the doctors' unions, for instance, are quite as real and quite as exacting as are those of any trade—though they are not called unions and work in a different way.)

Certain natural limits exist to the exactions both of labor and of capital. If labor obtains too much it will force employers into bankruptcy, and not only destroy the work on which it depended, but also frighten away other employers who might engage in it. If capital gives too little it will lose its employees, who will undertake other work. In practice these limits are seldom reached, though they are continually closely approached.

From the workmen's point of view the employer who cuts wages does so merely to increase profits. Perhaps he does sometimes, but commonly he does nothing of the sort. He, too, is pushed.

Except in the case of monopolies, manufacturing is done to-day on a very narrow margin. Earnings come from small profits on the items of a large business rather than from large profits on those of a small business. The labor cost of manufacturing is nearly always more than half the total cost.

It follows that while a small reduction in labor cost may not *directly* enable a manufacturer to increase his earnings and his dividends, it may enable him to sell his goods cheaper and get the market away from his competitors, and thus indirectly increase both. These competitors in

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turn must find some way to reduce costs, or they will have to go out of business. Costs are based on labor, raw material, freights, and processes; and a manufacturer must be always trying to reduce all of these on penalty of ruin if his competitors outstrip him.

The cost of raw materials is reasonably uniform. Freight rates are required by law to be uniform for each particular locality. The best process available is, of course, employed. Only wages remain, and these, in the absence of a union, can always be scaled down. A manufacturer, therefore, reduces wages as much as he can, not because he really wants to, but because he must meet his competitors' rates or go out of business.

The remedy, of course, is to require all manufacturers to pay the same rate of wages for the same amount of work, due regard being had to outside conditions, and thus prevent one or a few reckless or tyrannical or grasping employers from cutting them, thereby driving their competitors to follow suit or go to the wall.

In other words, what is needed is a wage standard varied enough to apply to all sorts of labor, and flexible enough to meet the always changing conditions of industry. Whether such a wage standard can ever be secured is a question. Certainly the unions have helped toward it.

The Work to Be Done.—Labor unions universally seek to limit the amount of work to be done in a day. Either they try to limit the time a man may work or they try to limit the amount of work he may do.

There are two ways to limit the time a man may work—one is to fix the limit by law, the other is to fix it by agreement with individual employers or individual trades.

Attempts to fix a general limit by law have not been very successful. Two or three states have adopted a general eight-hour law, only to have it declared unconstitutional by the courts on the ground that it deprives men of the right to sell their labor as they will. More fortunate have been laws fixing the hours for particular trades—for rail-

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way engineers, for instance, on the ground that a man on whose vigilance the lives of so many people depend must not be worked beyond a certain limit; or limiting the hours of coal-miners, on the ground that their employment is peculiarly dangerous to life and to health. So also a number of states have limited the working-hours of *women*, on the ground that they are physically inferior to men, and, as mothers of coming generations, should be protected. Again, nearly all states have limited *children's* labor, on the ground that children are entitled to reasonable play-time and reasonable school-time, and that neither their parents nor any one else have the right to deprive them.

The United States government and most state governments have an eight-hour day for their own employees. Private employers generally have an eight, nine, or ten hour day, according to the conditions of the industry. Unskilled labor and unorganized labor alone have no limit other than that fixed by the danger of not being able to get laborers.

Limitation by agreement is quite general. Hours of labor have already been limited in most, if not all, important lines of skilled labor. This has been brought about by the unions, but it inures to the benefit of both union and non-union men.

Labor often strives also to limit the individual output in a day.

At first blush this seems outrageous. That any association of men should claim and exercise the right to dictate to another man how long and how hard he shall work seems contrary to all American ideas. In the case of "piece-work," where each workman is paid by the amount of work he turns out, it seems not only outrageous but silly.

It would be both if this were all. But it is not all.

Take the case of any class of piece-workers. They earn such and such an amount a day for a limited production. One day all restrictions on output are removed, and every-

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body sets out to make as much as he can. The poorest workmen make about what they did before; better workmen make half as much again; the best workmen double their earnings; everything is satisfactory. But one day the factory posts a notice: "Rates for piece-work will be reduced twenty per cent." The men grumble, but they submit; they put on extra speed to make up for the cut in rates; soon earnings crawl up again. Then comes another cut, and perhaps another. Finally the average fair workman finds that he is earning just about what he did in the old days; the best workmen are earning a little more; and the poorer workmen are earning a good deal less. But they are all working twice as hard as they did before. Practically they have gained nothing.

This is not a mere theory; it is a condition. It is what has happened, is happening, and will happen, unless prevented, under the circumstances cited. Is it any wonder that unions limit output when they can, rather than bring about a condition such as this?

The Conditions of Laboring.—Here, for the first time, the state has an unquestioned right to interfere. The lives and health of its people are of the very highest importance to all states, and all states have the right to insist that they shall not be needlessly injured or imperilled. Hence we have many laws regulating the conditions of labor—laws in regard to handling machinery; laws fixing the time for lunch; laws requiring a supply of seats; laws requiring decent toilet facilities, ventilation, and so on.

Liability for Accidents.—Both the United States and most of the several states are woefully behind the rest of the world in fixing the liability for accidents that must occur in all industrial work. Generally speaking, the only remedy of an injured man is to sue or threaten to sue his employer. Generally he only threatens, and the employer "compromises." In many states if the accident happened through his own fault, or the fault of a fellow-workman, the employer is freed from all liability. In some states the

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fact that a workman was at the scene of the accident (although in pursuit of his regular duties) convicts him of "contributory negligence" and absolves the employer.

On the other hand, damages are often given by tender-hearted juries far in excess of any reasonable amount. Both the employer and employee suffer by the uncertainty.

Such a condition exists in no other civilized country in the world. Everywhere else rates of compensation for an accident are automatically fixed by its severity and by the wages of the workman. Nowhere are they determined by a suit at law. Employers make provision for their losses from such damages exactly as they make provision for losses from fire, lost freight, vermin, wear and tear, and so on, and adjust their business to them. As President Roosevelt said in his message to Congress urging the adoption of a liability bill for the District of Columbia: "In no other prominent industrial country in the world could such gross injustice occur; for almost all civilized nations have enacted legislation embodying the complete recognition of the principle which places the entire trade risk for industrial accidents (excluding, of course, accidents due to wilful misconduct by the employee) on the industry as represented by the employer."

Congress has tried to rectify this, but Congress has power to do so (except in the District of Columbia and the territories) only where interstate commerce is involved. In June, 1906, it passed an employers' liability act, the purpose of which chiefly was to enable railroad employees to recover damages for injuries resulting from accident, even though the negligence of some far-off "fellow-servant" had contributed to the accident. In January, 1908, the Supreme Court declared this act unconstitutional, on the ground that it applied to accidents arising in *state* as well as in *interstate* commerce, and that Congress had power over the latter only.

To cure this defect Congress passed a new act in April, 1908, applying only to accidents arising in interstate com-

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merce. Under this act two Connecticut brakemen sued a railroad. The state court, however, dismissed the suit, ruling that Congress did not intend and had no power to make the act incumbent on state courts, and that if the brakemen wished to recover damages they must sue in the United States Court. Generally speaking, to sue in the United States Court is expensive and inconvenient.

In one Western case, in 1908-09, where a brakeman sued for loss of both feet, there were seven different trials before the cripple finally got his money.

Congress has enacted no general liability law for the District of Columbia or for the territories, and most of the states have been equally negligent.

The Laws of Industrial Warfare.—Just how far capital and labor may be allowed to go in their warfare has not yet been fully decided. Laborers may, of course, refuse to work if the terms offered are not satisfactory, but they may not use violence to prevent other men from taking the places they have vacated. Individually they may refuse to buy goods made by an employer whose methods they do not approve, but if they incite other men to follow their example their conduct is usually held to be a criminal conspiracy. An employer may not "blacklist" men, thus preventing them from getting work. A labor-union may not publish an "unfair" or a "we don't patronize" list of firms that have incurred its enmity. These points are pretty well established, but very little else is. Each state has its own decisions on the subject.

The employers' favorite weapon in labor troubles is the injunction. If application is made to a judge, stating that certain persons are about to do certain things that will inflict "irreparable injury" on the applicant, the judge will issue a temporary "injunction" directed to the people complained of, forbidding them to do such things until he can inquire into the matter further. Usually he gives them two or three days to prove their right, if any, to do the things in question. If they do not prove it by the end

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of that time he makes the injunction "permanent." If it is violated the person disobeying can be arrested and sent to jail for "contempt of court," without trial by jury, for as long a time as the judge sees fit—and this even if it be shown that the person was entirely within his rights (see page 128).

The power of injunction is necessary to enable the courts to check disorder. Of its careful and conservative use there can be no just complaint. But all judges are not careful and conservative, and in many cases this great power has been used recklessly in a way that itself inflicts "irreparable" injury on the workmen.

Consequently, strenuous and in some states successful efforts are being made to limit the power by requiring a hearing before even a temporary injunction is issued, and by requiring jury trials before punishment can be inflicted for contempt for violating its provisions.

TOPICS

Find out what you can about any labor-bureau or similar organization that there may be in your state, what it aims to do, and what it has accomplished in regard to factory legislation, protection of employees, regulation of conditions of labor, liability of employers, etc.

Tell the history of some recent strike, the causes leading up to it, methods employed on each side, and the result. What were the benefits at the end to one side or both? Was there any attempt at arbitration? Find cases where that means has been successful.

Find examples of some recent injunctions. State whether you consider the judges warranted in issuing them or not.

Is the trend of recent legislation regarding capital and labor more favorable to one side than the other? If one, which?

CHAPTER XXXVI

WOMEN'S RIGHTS

Women's Votes.—We are very apt to think of “women's rights” as if there were but one of them. Women's claim to vote has been so emphasized, so dinned into unsympathetic ears, that the ears have become deaf to the really disgraceful treatment of women by the laws of the majority of the states. Of course, the suffragettes believe that if they had the right to vote they could soon right their other wrongs for themselves. This, however, is by no means certain, for it is not enough that one should be able to vote—he must also learn how to vote wisely. A revolver in an untrained hand often does as much damage to its possessor or to a friend as it does to a foe. That the suffrage is by no means a simple thing is proved, if proof be necessary, by the poor fist that men are making at it, despite the fact that they have been trained in its use from their youth up for generations, and by the acknowledged failure of the negroes to make satisfactory use of it.

There has been a great deal of argument pro and con on the subject of women's suffrage, especially of late years. One argument always advanced is that women's influence would tend to “purify” politics. This, however, is by no means certain. So far four states (Colorado, Wyoming, Idaho, and Utah) have given women the right to vote, and in Colorado, at least, they do vote to a large extent. In that state women have secured laws putting themselves on the same plane with men in every respect. But if the testimony of Judge Lindsay, of the Juvenile Court of

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Denver, is to be believed, politics in Colorado are by no means in a condition that would support any claim in regard to woman's purifying influence. The women voters of Colorado seem to have yielded as readily as the men to the blandishments of the boss, and to submit as cheerfully to the rule of the machine.

Nevertheless, it is probable that women's votes really would help in the moral regeneration now in progress. If women were once persuaded as to the moral side of a question they could be relied on to vote solidly on that side, throwing overboard all the sophistries of politics that appeal so powerfully to men. As a brilliant woman writer recently put it, if "once they fix their amazing genius for tattling upon the ugly, bob-tailed, masculine negligences in the national housekeeping, instead of upon their own cake-receipt shortcomings," the rule of the "grafters" will be over.

Again, it is urged that women own property, and that they should help make the laws that regulate it. This claim undoubtedly has a basis in justice. Still, it should not be forgotten that, although many women *own* property, few have *earned* it. They got it from their husbands or their fathers. It came to them from men, by the grace of man-made laws, and it is not altogether unreasonable that they should trust men to regulate their rights in it. Of course, conditions are changing. Some women are to-day building up fortunes for themselves, and if these shall in time become really numerous their claim to help make laws concerning their property will become very strong.

The principal discussion, however, is as to whether women really want to vote, and whether they actually would vote if they could. So far there has been no conclusive evidence on this point. A few women have strenuously demanded the suffrage and have claimed to speak for the whole sex, but it is by no means certain that they really do so. On the contrary, it is reasonably certain that if anything like a majority of the women of the United

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States did really want to vote, they could get the right to do so in very short order. If they wanted it enough to cause each of them to insist that her own particular man should help to get it for her, there is not the least doubt that he would do so. Some anger, a few tears, and a little persistence would conquer all but the most stubborn. Women use these weapons every day for things they care for only slightly—use them often for a mere whim or to try their power. Is it believable that they would not use them to secure votes if they really wanted them?

Woman's Right to Labor.—Many states have taken account of woman's physical weakness, and have attempted to make labor easier for her. They have often been balked, however, in this attempt by letter-of-the-law judges, who have declared such laws unconstitutional, on the ground that they deprive women of certain "rights."

For instance, New York adopted a law forbidding the employment of women in factories after nine o'clock at night, and Illinois a law forbidding the employment of women for more than ten hours a day. The courts declared these laws void, on the ground that they deprived women of the "right" to sell their labor on any terms they chose, and other courts in other states have ruled in the same way. On the other hand, the Supreme Court recently held, in a case appealed from Oregon, that women's hours of labor might be limited by law in cases where it could be shown that a longer employment would be injurious to their health and might unfit them for becoming the mothers of the next generation (see also pages 223-228.)

It is only in the United States, by-the-way, that the law is so careful of women's rights. In the old tyrannical countries of Europe the law does deliberately deprive women of the "right" to work till they drop. In 1906 all the chief European nations signed a convention at Berne, Switzerland, regulating and supervising women's labor by day, and in large part forbidding them to work at night at all.

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The assumption is that a working-woman (or a working-man, for that matter) is really free to sell her labor on her own terms, and is free to refuse to work for longer or later hours if she likes. Of course, she is not free to do anything of the sort—unless she is a member of a strong labor-union that can protect her. She can give up her job, yes; but if she does she is not unlikely to have to give up eating, too.

Women's Citizenship.—A woman's citizenship is that of her husband. If an American woman marries an Englishman or a Frenchman she becomes English or French, and loses all rights as an American, even though she never leaves the United States. Her brother, however, may marry abroad and live abroad, and yet retain his American rights. About the only justification for this is the fact that it has always existed.

Women's Possessions.—As long as a woman is single she may exercise over her possessions about the same rights as a man. But the moment she marries she loses almost certainly some, and not unusually all of these.

Up to comparatively modern times married women's rights could be very accurately summed up in the simple declaration that they had none. In 1839 Massachusetts passed a cautious law giving married women partial control of their property, and in 1848 New York adopted a more generous measure. Before then married women had no property rights at all. Even to-day the husband absolutely controls his wife's property and earnings in Arizona, California, Idaho, Louisiana, South Dakota, Tennessee, and Texas, and he partly controls them in Alabama, New Mexico, and Missouri.

In all these states a married woman's property may be taken for her husband's debts. Even if bought with her earnings, it may be sold by her husband without her knowledge and the proceeds spent in dissipation. In Georgia, Louisiana, and Texas a married woman may not work at all for pay without her husband's consent in writing. In

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Georgia, Massachusetts, Montana, North Carolina, Oregon, and Virginia a married woman can control a business separately from her husband only by registering herself as an independent trader. If she has neglected to do this her husband can sell her business and keep the proceeds, or the business can be taken for his debts.

Women's Rights Over Their Children.—The rights of married women over their children are also in sad need of reformation in many states. In twelve states only do they have any rights over them at all; that is to say, in the other thirty-four states children belong exclusively to their fathers, and can be given away or willed away from their mothers. Such a law, however, was recently declared unconstitutional by the supreme court of South Carolina, which declared it to be in contravention of the fourteenth amendment to the Constitution of the United States. "It seems perfectly clear," said the court, "that the general assembly cannot empower the father, at his own will, to deprive the mother and the children of these legal rights so long established as elements of personal liberty." If this opinion is generally followed, it will work a tremendous change in the rights of women over their children.

The child's earnings and his "services" (or labor) belong to the father and not to the mother. In 1908, in New York, the courts held that a widow could not sue for damages for the death of her son in an accident, on the preposterous ground that she was not "next of kin" to the child she had borne.

On the other hand, in most states men are liable for their wives' debts, and in a number of states men are liable for their wives' misconduct. In New Mexico, for instance, if a married woman steals, her husband may be tried and convicted and sent to jail for her theft, though it is not of record that any has been. No *state* goes quite so far as this, but a number assume that a husband is guilty of his wife's misconduct, and require him to prove his innocence or suffer the consequences.

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TOPICS

If women should receive full rights of suffrage and should vote in large numbers, what effect would it probably have upon party lines in politics?

Is suffrage for men a right or a privilege?

Do wages depend upon sex, age, color, or on demand and supply? Prove your answer.

Should the question of votes for women depend entirely upon the feeling of women on the question?

In your state, what are the rights of a married woman in regard to her property, her business, her children, etc.? Have they been at all improved lately?

CHAPTER XXXVII

WOMEN'S LABOR

Advisability.—Whether or not women ought to engage in industrial work (as opposed to housework) is no longer a debatable question. Women do engage in it, and are doing so more and more every day. All the arguments in the world will not alter that fact. Women's labor is a condition and not a theory; revolutions do not go backward, and women cannot be forced back into the narrow field occupied by their grandmothers; the most that society can do is to ascertain just what evils result to women and to the community from women's labor, and to try to lessen or prevent them.

Popularly these evils are supposed to be both great and many. Individual cases where evil has resulted have been declared to be typical, and Cassandra-like prophecies for the future have been wide-spread. Until very recently, however, all arguments, both for and against women's labor, have been theoretical; only experience could decide whether they were more than theories; and there was no experience to go upon.

This is no longer true. Women have been working long enough and numerous enough to bring out the average effects of work upon them; and these effects have been collected and tabulated and are available as a basis of argument. It is no longer permissible to assert that industrial labor will or will not injure women; henceforth all arguments must be based on ascertained facts that it has or has not injured them.

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Women's labor may be considered from two points of view: (1) its effects on society and (2) its effect on women.

Effects on Society.—There are two chief ways in which women's labor is said to be injurious to society: (1) in taking at low wages "jobs" that otherwise would have to go to men at high wages and would enable the latter to marry and provide for their families; (2) in reducing the marriage-rate and the birth-rate.

Superficially considered, there seems to be no escape from the first of these drawbacks, yet, followed to its conclusion, it contradicts itself, for it assumes that men's wages have gone down, when, as a matter of fact, they have gone up. A man can buy more with his wages to-day than he ever could before. Far from taking high-priced "jobs" away from men, women seem to have taken merely the simpler work created by the development of modern machinery, and have thereby made possible the existence of many more high-priced "jobs" for the men. Each factory employs fewer men, but there are many more factories. Without the aid of women to do the simpler parts of the work many factories would have to close, throwing men out of work, and the price of the product would rise, causing that much greater demand on the salaries of the men.

The entrance of women into industrial life may be compared to the entrance of machinery. Not so many years ago machinery was opposed, on the ground that it would deprive men of their work; later it was found that it supplied men with more abundant and better-paid work than they ever had before. So also it seems to be proving of women's labor.

The second objection—that women's labor increases immorality, prevents marriage, and reduces the birth-rate—though plausible, is negated by the facts. College education may lessen marriages, but industrial labor does not do so; the "race suicide" concerning which Mr. Roosevelt spoke is among the idle rich, and not among the in-

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dustrious poor. Among the latter there is no apparent decrease in either marriage or child-bearing. In fact, the wider acquaintance that industrial labor brings improves women's chances of making satisfactory marriages. The great majority of factory-workers do marry and go to homes of their own sooner or later; in Chicago the average factory-worker gives up her "job" after seven years, and, except those who die, practically all of them quit in order to get married.

That industrial work increases immorality is only a sort of bogey nowadays. Years ago industrial women were perhaps more exposed to temptation than their home-keeping sisters, but this is certainly no longer the case. There are too many of them and they have learned how to protect themselves. Men have gotten used to them and no longer consider them fair game.

Effect on Women.—Much misconception in the past has been due to an attempt to compare women of the well-to-do class with women who engage in industrial work. This, of course, is not fair. The vast majority of working-women work under practically the same conditions that their husbands and fathers work under. The wives and daughters of the well-to-do mostly work, when they work at all, as clerks of one sort or another; the wives and daughters of working-men—and these make up the great bulk of all working-women—work in factories of one sort or another. To get any fair understanding of the effects of labor on women, this fact should be borne in mind. The question is not whether women should work at all; nearly all of them have to work in one way or another, and the real question is whether they are better off when working in factories or in homes—their own or those of other people.

Comparison may be made as to hardness, hours, health, and pay.

Women's work in factories seldom calls for great physical labor. Usually it consists of doing some one thing

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over and over. Sometimes it demands a cramped posture. But beyond any doubt it does not compare in degree of hardness with sweeping, scrubbing, cooking, and washing.

The hours of the houseworker are longer than those of any industrial worker can be. In the nature of things they must begin earlier and continue later, for breakfast has to be prepared before the industrial workers begin to work, and dinner-dishes have to be washed up after the industrial workers cease working. There are, of course, periods of rest during the day, but they are seldom long.

Statistics show that the health of women engaged in gainful occupations is much better than that of women engaged in housework. Between the ages of fifteen and forty-four the death-rate for women factory-workers is about five per thousand, and that for servants is fourteen per thousand. After forty-four the contrast becomes even more marked. This difference arises largely from the better sanitation and better ventilation of the factory buildings as compared, not with the homes of the well-to-do, but with those from which the working-women are drawn.

Women who work in their own homes get no pay; those who go out as servants get about the same pay (including the saving in their living expenses) as factory-workers. Clerks in stores get poorer pay (four or five dollars a week), but factory-workers average about eight dollars, which compares very well with three to four dollars and "found" of the domestic servant. Women's wages are less than men's wages (see below), but the question just now is not between men and women, but between the rates of pay for different sorts of women's work.

Thus, in all respects it appears that women engaged in industrial work are better off than those of *the same class* who are engaged in housework.

Comparison of Men's and Women's Labor.—Roughly speaking, women appear to get about half the wages that men do for the same work. Outrageous as this may seem, it is not really as unjust as it sounds. Most men

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adopt a trade or vocation, and stick to it till they die; most women adopt one with the intention of quitting it as soon as they can, which usually means as soon as they marry. Statistics for Chicago (other cities are probably not very different) show that the average working-woman gives up her place and turns to household matters after only seven years of labor. The average woman, too, supports only herself, while the average man supports a family. It follows that while women are quicker, neater, and more careful than men, they are less to be depended on, less thorough, less eager to hold their places, and less capable of "head-work." This is not to beg the question by asserting that they are incapable of *learning* to do equally good head-work; it is merely to assert that, as a matter of fact, they do not so learn. Seven years' training naturally cannot have as good results as forty years' training. It follows that women have generally been allotted the mechanical part of labor—the preparation of the separate parts of a product, for instance, and that the work of assembling these parts into a whole has been retained by the men.

There are many exceptional women, of course, but these exceptions do not always suffer the discrimination that is applied against the average. When they do, it is because they have not been able to show that they *are* exceptions, and until they do this they must fall under the suspicion that attaches to all working-women. An employer hesitates to train and advance a class of employees who, as experience has shown, may leave him at a moment's notice. On the other hand, employees who stand ready to quit their places at a moment's notice are not likely to be worthy of training and promotion.

Nor is it at all certain that women are really underpaid for the work they do. When we read, for instance, that a factory that used to employ one hundred men at three dollars a day is doing its work with ten men and one hundred women at one dollar and twenty-five cents a day, we are likely to imagine that this means that the women

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have taken the men's "jobs" at lower pay. In fact, however, it oftener means that women are now employed simply to feed the machines that do the men's former work—machines that had not been invented in the old days when men did the whole work from start to finish by hand. The women's work is less laborious and calls for far less skill than the men's did, and is very naturally less well paid. When the grade of their work is considered, there is even doubt whether the women are not paid proportionately more than the men used to be.

TOPICS

What local cases do you know of where the pay of women for services similar to those of men has been quite different from theirs?

Do wages depend upon age, sex, color, or on demand and supply? Prove your answer.

What did the economist mean when he said that the average society woman was an economic parasite?

CHAPTER XXXVIII

MARRIAGE AND DIVORCE

MARRIAGE and divorce is a matter for the state, and seems likely to remain so. The agitation for an amendment to the Constitution giving the national government authority to legislate on the subject seems to have died down, though the attempts are still being made to persuade all the states to adopt identical laws on the subject.

At present, while the laws of *marriage* are reasonably uniform in the various states, those of divorce are so widely divergent, and in many states are so loosely drawn, as to bring discredit on the entire American system.

Marriage.—A hundred years or so ago, when the Constitution was adopted, marriage was generally held to be a civil and not a religious contract. In New England, indeed, marriages by clergymen were actually illegal. Later the modern system grew up, by which either a civil or a religious ceremony is valid, the choice being entirely free in all the states except Maryland and West Virginia, neither of which makes any provisions for civil marriage. In about two-thirds of the states the law makes a ceremony of some sort *obligatory*; in the other third it makes it merely directory, and the courts have held “common law” or “mutual consent” marriages to be valid.

All the states except Tennessee forbid marriage with a niece or a nephew. About one-third of the states forbid marriage between first cousins. None of them forbid marriage with a “deceased wife’s sister,” the relationship over which England has had so much difficulty. All the South-

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ern states forbid marriages between whites and negroes, and all the Far West states except Washington and Idaho forbid it between whites and Mongolians. A few states forbid marriage between two paupers, and several forbid marriage to insane persons and to persons afflicted with certain diseases.

Divorce.—Divorce is of two sorts—*a mensa et thoro* (from bed and board), which is merely a judicial separation and is rarely resorted to nowadays, and *a vinculo matrimonii*, which is an absolute divorce. Marriages may also be declared null and void. Strictly speaking, however, this is not divorce, but a legal declaration that there has been no marriage.

All states except South Carolina grant divorces for one cause or another; some grant it only for adultery, while others grant it for mere incompatibility of temper. Many states permit divorced persons to marry again at once; others require them to wait for terms varying from three months to three years.

All states require notice of divorce suits to be served on the defendant, but most of them provide that publication in a newspaper shall constitute such notice. A few states make it the duty of the county attorney to look into all divorce suits brought in his district, and to resist either all such or those that are not defended. All states require that the plaintiff must have a "residence" in the state where suit is brought, but they differ widely as to what constitutes such residence, some states requiring six months and some a year or longer. All states provide for either temporary or permanent alimony (or money allowance) to the wife; and a few states, under certain circumstances, for alimony to the husband.

Divorce laws are thus both complex and confused, and can be made to produce almost any result when handled by a clever and unscrupulous divorce lawyer. However, the tendency is everywhere toward improvement, or at least toward the correction of the worst abuses, and it is probable

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that fairly satisfactory conditions will be worked out sooner or later. An encouraging feature is the strong opposition of most churches to the remarriage of divorced persons. While in some cases this may work hardship, it generally makes for good.

TOPICS

State some arguments for and against absolute uniformity in state laws on this subject, and for putting the whole subject under national instead of state control.

What reasons can you assign for divorce being more frequently resorted to by women to-day than some decades ago?

Can poor people get divorces with less newspaper notoriety than wealthy people?

Should divorce cases be heard behind closed doors when both parties wish it? Give your reasons.

CHAPTER XXXIX

PROHIBITION

PROHIBITION is both a national and a state question. At present it is chiefly an affair of the state, but it is steadily becoming more and more national in its scope, and—unless an unlikely change of sentiment takes place—may soon become essentially national.

This is not to say that the Prohibition party is likely to triumph in any national election. On the contrary, it is most unlikely to do so; for as soon as it comes within measurable distance of a triumph one or both of the old parties is pretty sure to declare for prohibition and absorb the Prohibition party. This is the usual fate of strong third-party movements.

The national government and the state governments must approach the question from different directions. The state governments can prohibit the manufacture or sale of liquor within their own boundaries, but they cannot prohibit its shipment into them from another state. Congress, on the other hand, cannot prohibit the manufacture or sale of liquor (except in the territories, etc.), but it *can* restrain its shipment. Only by combined action of the nation and the state can the people control or prohibit the business absolutely.

Local Prohibition.—The present mode of prohibition seems to be generally satisfactory to the people of the country. It rests on a home-rule basis. Most states have what are known as “local option” laws, by which each district or county or other subdivision has the power to adopt local

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prohibition—to declare that liquor shall not be made or shall not be sold within its boundaries. (Kentucky, for instance, which is popularly associated with whiskey-making, had, in 1909, this local prohibition in ninety-six of its one hundred and nineteen counties.) Later, after they have tried local option, the people of a state may, if they desire, establish state-wide prohibition. In 1909 about thirty-five million people (one-third of the population of the United States) were living in prohibition territory—state, county, or city. The sentiment is particularly strong in the South, where the population is largely rural and there are comparatively few great cities.

Years ago certain states, having forbidden the manufacture and sale of intoxicants, found that these were being shipped into them from non-prohibition states, and accordingly adopted laws forbidding this. These laws were declared invalid by the Supreme Court, on the ground that they were a restraint of interstate commerce, the control of which belongs exclusively to Congress. The court held that after the liquor got inside the state its sale or distribution or giving away could be restrained, but that no state could prevent a railroad or express company from conveying or an individual from receiving liquor in "original packages" as shipped from the dealer.

National Prohibition.—Congress could, of course, absolutely forbid *all* interstate transportation of liquor or its transportation into prohibition states—this by virtue of its authority over interstate commerce.

Congress, however, has not yet exerted this power, for two reasons: (1) because such action is opposed by the makers of the liquor, by its transporters (who collect the freight charges), and by its consumers (who are often strong supporters of state prohibition—for other people); and (2) because the national government derives a very large part of its income from taxes on liquor manufacture, and is chary of doing anything that will tend to reduce that income.

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The most that Congress has done has been to adopt a law (in 1909) which prohibits the shipping of any liquor from one state to another except to a *bona fide* consignee, and requires the nature of the contents, with the amount of alcohol contained therein, to be plainly stamped upon the outside of the package. Before this law was enacted distillers could and did ship jugs of liquor into prohibition states consigned to themselves. Then they sold by mail a written order to a patron, who would go to the express office, present the order, and get the jug. The requirement that the consignee shall be a *bona fide* one breaks up this plan.

Cost of Prohibition.—The argument that prohibition would be very costly is, of course, a very short-sighted one. If the liquor business is responsible for a large proportion of our crime and our poverty—and it is universally admitted so to be—it cannot possibly pay enough for the privilege of existence to balance the account. All its intake is drawn from the people, and the taxes it pays, large even though they be, can only be a percentage of that intake.

Prohibition would reduce national income (by loss of internal revenue taxes), and state and city incomes (by loss of license fees), but it would also reduce costs of government and leave the people better able to pay the extra money required.

As a matter of fact, all the state, city, and county taxes derived from liquor amount to less than six per cent. of the total revenues of these entities; while the cost of courts, jails, police, etc., a very large part of which is unquestionably due to liquor, is about four times as great. The nation's annual drink-bill is very nearly twice as large as the total revenues of the national government.

It is sometimes argued that liquor-dealing is a business like any other, and that the state has no moral right to interfere with it at all. This argument is, of course, self-destructive, as similar reasoning would permit unrestrained

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dealing in poisons, explosives, lottery-tickets, bank-note paper, and the like. The liquor business depends on society; it could not possibly be carried on without society; and it is well established that society has a right to regulate any business that is dependent on it.

The strongest argument against prohibition is that it does not prohibit—that it only drives the dealers to evasion of the law by means of “blind tigers” and other well-known devices. Undoubtedly in many cases, especially in cities, this argument is only too true, but in the majority of cases it is totally untrue. Even if confirmed drinkers cannot be prevented from getting liquor, prohibition certainly helps to remove temptation from the young. Moreover, even if prohibition fails when tried by a single isolated state it is less likely to fail when tried by a dozen contiguous states.

TOPICS

When did the Prohibition party appear in national politics, and what was its strength at the last presidential election?

What figures can you find to show the importance of the liquor traffic in the country?

Which seems to you best: to regulate the sale of intoxicants by licenses, to endeavor to prohibit it entirely, or to leave the question to local settlement?

How does your state deal with this question? In what way does this seem to be a good solution of the question? In what particulars might it be made more effective in practice?

CHAPTER XL

CONSERVATION

THE earnestness with which President Roosevelt, in the closing months of his administration, took up the work of urging preservation of the natural resources of the United States has led many people to believe that this preservation was an affair of the national government with which the states have little or nothing to do. Similarly the emphasis placed on the destruction of our forests caused most people to think that it is these alone that are in danger of exhaustion.

Both ideas, however, are erroneous. The national government has no power to preserve natural resources except when they are on public lands (in which case it can prescribe the conditions on which it will part with its ownership)¹ or in the territories. Power over all other natural resources belongs to the states. Second, while it is quite true that the destruction of our forests is the most immediate danger that confronts us, it is not really the greatest danger. The real peril, still far off but approaching, concerns itself with exhaustion of our mineral resources.

Exhaustion of Resources.—The world is just beginning to wake up to the fact that no natural resource is inexhaustible, and that the end of some resources is already in plain sight.

¹ It has been proposed by President Taft that hereafter the government shall part only with the surface or farming rights of its lands, retaining the ownership of the mining rights, which it shall lease for fixed periods at a graduated rental.

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Up to recent times, through all the unnumbered years since man came upon the earth, mining was practically non-existent according to the standards of to-day. Gold, iron, copper, and a few other metals were known, of course, and were extracted from the earth, but the entire production of the world for a year a century ago would probably not have supplied the needs of a single modern city for an hour. The world was in the position of a youth not yet of age whose wealth was kept from him by niggardly trustees.

But about three-fourths of a century ago the situation changed. The world came of age, and began to grasp its inheritance. Year by year its demands increased, and year by year it learned how better to satisfy them, until to-day it is squandering its resources faster than any spendthrift ever did.

To it, as to all spendthrifts, these resources seem inexhaustible. New mines, new processes, new inventions, follow each other with such amazing speed that they seem without limit. Men delight in their marvellous progress, and refuse even to think of its results. "What! Exhaust all the coal and oil and iron? Nonsense! There's enough for thousands of years, and by the time they are gone we'll have found something else to take their place. And what does it matter, anyhow? We'll all be dead and gone long before then."

This is the answer regularly made to-day even to those who would merely stop the present outrageous waste of our resources. Ninety-nine men out of a hundred refuse even to think of what President Roosevelt called "the most important subject that confronts the United States to-day."

In 1908 the Governors of the states met at the White House in Washington and discussed the situation. Later the National Conservation Commission appointed by President Roosevelt put forth a voluminous report, taking up our natural resources one by one, and explaining just how we stood in regard to each. Many of the separate papers

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in this report were prepared by experts of the Geological Survey—not from data gotten up for the moment, but from information which they had long been collecting.

Exhaustion of Minerals.—First comes the question of our mineral resources. The report says: “The easily accessible and available coal will be exhausted about the year 2027, and all coal by the middle of that century.” Coal, therefore, will last us perhaps one hundred and fifty years longer, but long before that time is up it will have grown too valuable to burn. How are our descendants to keep warm? How is all the machinery in the world to run? What is to become of all the millions of people who live by grace of machinery? Certainly there will not be wood enough to serve. Will some other source of power be found that will take its place? Possibly, even probably; but by no means certainly.

Natural gas and oil will vanish long before the coal does. Witness the report:

“The outlook is that natural gas will be utilized for as long a period as has already elapsed since the industry began.”

It began to be used in 1882, so that it probably has only twenty-five years of life before it.

“Continuing the present rate of increase in production, the supply [of petroleum] would be exhausted about 1935. If the present annual production were continued without increase, ninety years would be required.”

Without petroleum, nine-tenths of the machinery would have to stop through lack of lubricants. There are not enough animal and vegetable oils in the world to-day to take the place of one-tenth of the petroleum used for this purpose. Graphite would serve as an inferior substitute. Will it be sufficiently improved in twenty-five years to serve in place of oil?

Coal, gas, and oil being gone, will machinery remain? Not so!

“The present average rate of increase in production of

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high-grade [iron] ores," says the report, "cannot continue even for the next thirty years, and before 1940 the production must have . . . begun to decline, and a very large use must be made of ores not now classed as available."

That is, in thirty years our iron-mines will have been so far exhausted that we shall have to resort to ores of such lower grades that they are now considered unprofitable. Barring radically new inventions in processes, the price of iron will become so great as to prevent its employment in many of its present uses, and to check very seriously its use in buildings.

Electricity is the great panacea to which many people pin their hopes. But electricity needs copper, and of copper the report says:

"Few companies have reserves [of copper ore] for as much as ten years." It adds, however, that new discoveries are probable, and that the copper resources of the United States are believed to be large enough to respond for "a number of years" to the probable demand.

In the case of lead the situation is more urgent. In fact, the end of the lead is actually in sight. Says the report:

"A steady decrease [in lead production] has taken place since 1903. And this has happened in the face of advancing prices. . . . The lead deposits of the world are being heavily drawn on, and, barring new discoveries of great importance, which are unlikely, a further reduction in the world's output is likely." Already the pinch is felt abroad, and soon it will be felt in the United States.

It may be some comfort to add that the world supply of gold and silver seems almost illimitable.

Even the supply of fertilizers will shortly be curtailed. "Assuming that the rate of increase will continue, it will require just twenty-five years to exhaust the available [United States] supply of phosphate rock. . . . The life of the phosphate rock must at best be a short one." What

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fertilizer is there to take the place of the phosphates? Is one to be evolved out of the air?

Thus in about fifty years the world has made great inroads on its stores of minerals, and the demand is increasing year by year by leaps and bounds. The spend-thrift world is running through its patrimony with amazing speed.

Waste.—Minerals must be used. But they should not be unnecessarily wasted, as they are being to-day.¹ According to the report, half a ton of coal is left in the mine and lost *forever* for every ton that is brought to the surface. In using coal for the manufacture of coke, the United States is wasting thirty-eight million dollars a year by the use of poorly devised methods. In copper smelting, thirty per cent. of the contents of the ore is wasted. In lead concentration, fifteen to twenty per cent. is lost. In iron mining, ten to twenty-five per cent. is wasted. Twice the amount of natural gas that is used is wasted into the air. The petroleum waste is not estimated, but it is enormous.

Much of this waste is preventable, but it can only be prevented by the action of the individual states. The United States can control only the territories and its own public lands. But owners can be forced by the states to cap gas-wells, for instance, and thus prevent millions of feet of gas from being wasted into the air. The reckless exploitation of oil-fields can be stopped. Already it has forced down the price of oil to a few cents a barrel, and oil that the next generation will bitterly need and gladly pay

¹ Near Birmingham, in Alabama, there are two parallel seams of iron ore, one close above the other. They are equal in richness, but the upper seam is easier to convert into pig-iron. Consequently it is being widely mined, while the lower seam is being neglected—and once neglected it is soon lost forever by the closing down of the roof. Thus rich ore (one-third pure) amounting to nearly one hundred and fifty million tons, as estimated by the Geological Survey, is being recklessly thrown away.

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dollars for as a lubricant is being burned to-day as a cheap fuel. Lead is used recklessly as white paint, despite the fact that other less scanty and equally good substitutes (zinc, for instance) can be found. Mine-owners can be forced to store the "tailings" from gold, silver, and copper mines—tailings that can be worked over in a few years at a good profit. More careful mining, while it may reduce immediate profits, will save much of the coal and the iron now left in the ground, and pay good dividends twenty years from now.

What will our children's children say of us if we continue to neglect these things, and permit reckless owners to ravage and spoil their inheritance for the sake of immediate profit?

Forests.—The waste in forests and the consequent ruin of the soil by washing away is also serious. Flood damages are increasing enormously. The report estimates the damage from these over the whole country at from forty-five to fifty-five million dollars a year for 1900 to 1902; at from seventy-three to ninety-eight million dollars a year from 1902 to 1906; at one hundred and eighteen million dollars in 1907; and at two hundred and fifty-seven million dollars for 1908. It says "the increase in flood tendency . . . is due in by far the largest measure to the denudation of forest areas."

Fortunately people are awakening to the fact that their rights in the forests are superior to those of the individual owners, and are beginning to insist that these must exert their rights in such a way as not to do irreparable injury to the whole country. This is not difficult, as the *least* profitable use to which a forest can be put is to cut it all down immediately.

In a message to Congress, January 14, 1910, President Taft said:

"The control to be exercised over private owners in their treatment of the forests which they own is a matter for state and not national regulation, because there is noth-

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ing in the Constitution that authorizes the Federal government to exercise any control over forests within a state, unless the forests are owned in a proprietary way by the Federal government."

This puts the forest-preservation problem squarely up to the states, and the states are rising to the situation. New York now has forest reserves of one million five hundred thousand acres, Pennsylvania of six hundred thousand, Wisconsin three hundred and fourteen thousand, Michigan two hundred thousand, and other states lesser areas.

World Exhaustion.—What has been said applies to the world as well as to the United States. Europe's supplies will be exhausted before ours. Asia's and Africa's and South America's will outlast ours, but for all of them the end must come some day. Before then, however, the commercial sceptre must depart from us to them. Iron and coal may be found in Africa, for instance, in great store, but freight rates from Africa to America will always be heavy, increasing the price in this country; and probably these "new" countries will prefer to manufacture their ores at home rather than send them to us. They may even decide to *keep* their *metals* at home for their own use. And where shall we be, then?

Of course, as many people claim, these woful prophecies may never come to pass. We may learn to extract the metals from sea-water, or from the air, or from well-nigh barren rock at a cost lower than we can extract them to-day from the richest ore. We may learn how to warm ourselves and run our machinery by the tides or by the central heat of the earth. We may do all sorts of things. No doubt we shall do many things that are now regarded as impossible.

But is it wise to trust to this vague hope? Should we not at least give our children all the time we can to learn how to provide for our grandchildren? We can do it by wise laws backed by public opinion and strictly enforced.

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If we do not do it there is at least a reasonable certainty that coming generations will have to do without some things that we possess and will have to pay a great deal more than we do for other things.

Of course, the world got along very well once without these things and it can do it again. But the Old World before the metals came was a very different world from that of to-day, and the new one after the metals go will be very different still.

Indeed, in the opinion of some far-seeing men, the present material progress of the world is only a phase—a brief phase in its long history. They prophesy that in a few centuries this age of machinery will vanish and the world will relapse into a pastoral state—perhaps into a second Stone Age.

TOPICS

In what parts of the country do we find gold, silver, iron, copper, lead, zinc, coal, natural gas, oil, phosphate rock, etc.?

Are any of them found in your own state?

Can you find some statistics showing the amount of production of these?

Where are the great forests of the country? What is the government doing in the way of forest conservation?

What would you suggest compelling the great lumbermen of our country to do when they are cutting down the forests to get lumber to supply our needs for buildings, etc.?

What relation is said to exist between forests, streams, floods, rainfall, crops?

CHAPTER XLI

LIMITS OF STATE POWERS

THE powers of the states are restricted in two ways: (1) by limitations in the Constitution of the United States, and (2) by limitations in their own constitutions.

Limitations in the Constitution of the United States.

—The Constitution forbids the separate states (1) to make treaties or agreements with other states or with foreign nations; (2) to coin money, or print or circulate “paper” money, or make anything but gold and silver a “legal tender”; (3) to pass any bill of attainder or *ex post facto* law; (4) to pass a law impairing the obligation of contracts; (5) to grant any title of nobility; (6) to impose customs taxes or duties, or to lay duties on “tonnage.” Further, any state law that conflicts with a power exercised by Congress by right of a grant in the Constitution is, of course, void.

Treaties and Agreements.—Treaties with foreign powers are so obviously national in their scope that the power to make them was denied to the states even by the Articles of Confederation—a denial that was affirmed in the Constitution.

Money Powers.—Under the Articles of Confederation the states could coin money, but were required to follow the standards of value and fineness set by the nation. The Constitution, however, for obvious reasons, put the whole subject exclusively in Federal hands. It also forbade the state to issue “bills of credit,” the term which in early days was used for such “paper” money as our familiar

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“greenback.” The prohibition, however, is not considered to forbid a state to issue bonds. Bills of credit, as understood by the Constitution, are “notes” issued by a government on its faith and credit, and designed to *circulate as money*. Whether or no they bear interest or are “legal tender” (see page 36) does not matter. The national government can issue such notes, but the states cannot. The states are not prevented from chartering banks with power to issue and circulate notes, because the faith of the states is not pledged to the redemption of these; but they cannot make such notes legal tender, for a *state* can give this quality only to gold and silver.

State bank-notes, having no guarantee behind them, often proved worthless, and Congress finally put an end to their issue by imposing a heavy tax on them.

Attainder and Ex Post Facto Laws.—The power to pass such laws was forbidden to the national government, on the ground that they were tyrannous (see page 130), and it was denied to the states for the same reason.

Obligation of Contracts.—The states may not pass any laws impairing the obligation of contracts; that is to say, no state has power to release a man from a legal contract. This restriction clearly forbids a state to adopt a bankruptcy law—though it may pass insolvency laws (see page 93)—for the object of a bankruptcy law is to release a debtor from his contracts. The Constitution imposes no such restriction on the United States, but it has been questioned, nevertheless, whether even the United States may impair the obligation of a valid contract except by a bankruptcy law, which the Constitution expressly gives it power to make. Contracts are *property* in point of law, and to impair them might very well be held to be a confiscation of private property, which is forbidden to both state and nation (see pages 108-109, 132).

The Supreme Court has held that the restriction on the states does not prevent them from adopting laws in regard to *future* contracts *between their own citizens*; for in-

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stance, Illinois has declared that a contract forbidding a tenant to keep his children in a flat building is invalid.

Titles of Nobility.—This prohibition is merely that applied to the general government (see page 130).

Customs Taxes.—The Constitution gives Congress power to tax customs (see page 27), and forbids the states to do so without the consent of Congress, which, of course, would not be given. It qualifies the prohibition, however, by adding that states may impose such taxes as may be absolutely necessary to enable it to carry out its inspection laws (such as quarantine laws, laws to determine the quality of food imported, etc.), but adds that if such taxes yield a surplus over the cost of inspection, this must be turned over to the United States.

Conflicting Laws.—The Constitution is, of course, supreme, and laws made *in pursuance of it* are naturally so also. All laws made by Congress are supposed to be made in pursuance of the Constitution. Until or unless they are declared unconstitutional by the Supreme Court they are supreme, and any state laws that conflict with them must yield. As the Supreme Court in all its history has declared only twenty-one acts of Congress to be unconstitutional, it may be said with considerable confidence of any particular act that it is constitutional and supreme.

The Constitution says also that treaties made under authority of the United States shall be the supreme law of the land.

There is considerable doubt as to just what this means. No one questions, of course, that it gives to treaties the full force of laws adopted by Congress—that it makes them supreme as far as the powers of the national government extend. Until very recently, however, no one claimed that it granted them *greater* authority than goes with ordinary laws, or made them supreme over local and state affairs with which Congress has no authority to meddle.

On several occasions in the past, when mobs lynched foreigners to whom United States treaties had guaranteed

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protection, the national government decided that its authority extended only to asking the Governor of the state to see that justice was done.

Recently, however, the theory has been advanced that a treaty is absolutely supreme. Our treaty with Japan, for instance, guarantees certain rights to Japanese residents in the United States, among which is claimed to be the right to send their children to the public schools on equal terms with American children. California, however, claims that it has the sole right to regulate its schools.

Such a right has never before been questioned; and, moreover, it is admitted that Congress (the President, Senate, and House together) cannot enact a law that would nullify it; yet it is held that the President and Senate can, by a treaty, override it and, so far as the treaty goes, extend the authority of the national government over it.

The national government is supreme within circumscribed limits. These it cannot overstep. It has no right, for instance, to compel California to grant education to foreigners. But if California should make such a concession the grant cannot be applied in the case of foreigners of one race and withheld in the case of another when our treaty relations with both nations are identical. The national government has the right to demand such impartiality from states as to permit its treaty-making power to remain valid. California, by waiving its legal right to withhold uniformly from all foreigners its educational facilities, has saved the face of the national government. For if foreign nations found that the nation's guarantees of favorable treatment of their citizens were apt to be overturned by the states, they would very justifiably consider the treaty-making power a farce and refuse to treat on any matter that needed a friendly attitude of the several states for its execution.

Limits in State Constitutions.—Nearly every state has in its constitution a bill of rights modelled on the bill of rights (the first ten amendments) in the United States

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Constitution. The latter forbids the United States government to meddle with certain rights of the people, and the state bills of rights ordinarily reiterate the same with regard to the state governments. All the older state constitutions are in practical accord about this, but some of the newer ones seem disposed to extend the restrictions. Oklahoma, for instance, restricts the right of the state courts to punish for "contempt" of court. On the other hand, it gives the states power to engage in any business provided it does so "for public purposes"—a power ordinarily denied by their constitutions to the states.

TOPICS

Study the constitution of your state and compare it, according to the date of its adoption, with a much older or a more recent one.

Are the state bills of rights merely a historic survival or a check on the legislatures that may prove vitally necessary at some time?

What other restraints are there on state governments?

Which touches us more closely and more frequently in our daily life, the state or the Federal government?

PART II.—ORGANIZATION OF STATE GOVERNMENTS

CHAPTER XLII

CREATION AND FORMS OF GOVERNMENT

Creation.—The states constitute the second of the two grand divisions of the government of the United States. Each is supreme in its own field. The people did not weld the states into a Union, nor did they divide the Union into states. They created both at one and the same time.

None of the states (except Texas) ever existed independently or has ever been a "sovereign" state.¹ The original thirteen were British colonies until the Declaration of Independence was adopted, and after that were parts of the sovereign nation. None of them ever exercised rights of sovereignty. They never parted with their sovereignty to the national government, for they could not part with what they never possessed. This question was fought out to a finish in the Civil War, when it was decided by the arbitrament of the sword that the states were not sovereign, but that they were parts of the nation. They could and did forfeit their rights under the Constitution by refusing to submit to the government ordained by that Constitution, but such refusal did not take them out of the Union. They could rebel; but such rebellion, if successful, would have created a new sovereignty, and would not have re-established an old one.

On the other hand, the national government never possessed any of the powers now reserved to the states.

¹ Vermont governed itself from 1777 until it became a state in 1791, but entered upon no foreign relations.

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The original thirteen states framed their constitutions as they saw fit. Their colonial governments were of three sorts—provincial, proprietary, and charter. The provincial governments (New Hampshire, New York, Virginia, and Georgia) were administered by a royal Governor and a legislature composed of a council appointed by the Crown and a lower house elected by the people; the proprietary governments (Pennsylvania, Maryland, and Delaware) had Governors appointed by the proprietors and legislatures convened by these Governors; the charter governments (Massachusetts, Rhode Island, and Connecticut) elected all their officers. The Revolutionary Congress recommended to the colonies that they adopt such forms of government as would secure good order during the “dispute” with Great Britain. Eleven of them adopted constitutions by 1780. Connecticut continued under its charter till 1818, and Rhode Island until 1842.

The remaining thirty-three states organized their governments by permission of the United States government. Generally speaking, Congress has adopted an act called an “enabling act,” authorizing each particular territory to form a state government. The territory has held a convention which has framed a constitution, which has been formally ratified by the people at an election. This constitution has then been submitted to Congress, which has scrutinized it, and when satisfied both with the document itself and with its mode of adoption, has passed a second act admitting the state (see page 101).

On occasion Congress has authorized the President to issue a proclamation admitting a state when satisfied that it had complied with the provisions of the enabling act. This supervision by Congress is real and not merely formal; for instance, it required Utah to place in its constitution a provision forbidding polygamy.

Constitutions.—The states exist exactly as does the national government—by warrant from the people. “We, the *people* of the United States, . . . do ordain” reads the

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Constitution of the United States, and most state constitutions begin similarly. Some of their constitutions are as old or older than the United States Constitution, and some are very much younger (Rhode Island governed itself under its British charter until 1842), but one and all derive their powers from the people.

The United States government, however, was framed by all the people of the country, who compromised their differences of opinion and agreed on a particular form of constitution which probably was not entirely satisfactory to a single one of them. The forty-six state constitutions, on the other hand, were framed by forty-six different sets of men who came to their tasks with widely different ideas. The Puritans of Massachusetts, the cavaliers of Virginia, the French of Louisiana, the miners of California, the Scandinavians of the Northwest, and the heterogeneous population of Oklahoma could hardly be expected to have the same ideas of government, even if they had all drawn up their constitutions at the same time instead of at dates differing in some cases by more than a hundred years. It is not surprising, therefore, that no two state constitutions are exactly alike, and that some of them should differ very widely indeed.

Probably the most radical differences arise out of modern distrust of the state legislatures. A hundred years ago the people placed practically all law-making powers in the hands of their legislatures. Nowadays they seek to restrain their legislatures, not only by direct limitations on action, but by reserving to themselves, under certain conditions, the right to initiate laws themselves and to negative laws adopted by their legislatures. They distrust their legislatures, fearing that the members may be induced to betray the popular welfare in the interests of great corporations, which will be powerful enough to protect the traitors. Therefore, instead of merely laying down general principles and leaving their application to the general legislature, recent state constitutions have sought to make the

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applications themselves; that is to say, they contain a great deal of matter that theoretically would much better be left ordinary law. Oklahoma, for instance, provides in its constitution that no railroad shall charge more than two cents a mile for transportation of passengers. Circumstances might easily arise where such a provision might be both oppressive to the railroad and injurious to the state; yet Oklahoma so fears that the railroads may corrupt its legislature and deprive its people of cheap fares that it fixes these in an organic law which it cannot alter except by an amendment to its constitution.

Forms.—That the state constitutions do not differ radically is owing to the fact that they are controlled, to a certain degree, by the Constitution of the United States—not only by the example it sets, but by requirements it expresses.

The Constitution, it is true, nowhere says directly that the state governments must be in this or that form. The most that it says is that Congress “shall guarantee” to every state a republican form of government, but it nowhere explains just what is meant by “a republican form of government.” Indirectly, however, it requires certain things. It says, for instance, that Senators shall be elected by the legislatures, thus requiring every state to have a legislature. It speaks of voters for “the most numerous branch” of the legislature, thus requiring that there be at least two branches and that one of them be elective. It speaks frequently of the executives, thus requiring such officers. It decrees that state judges must take an oath to obey the Constitution of the United States, thus calling for the creation of judges. It speaks of state constitutions, inferring that there must be such things. And so on.

In their larger elements, therefore, the state governments are modelled on the national government. Each of them has a constitution, a Governor, an elective legislature of two houses, and a judiciary; but they differ greatly in the details of all of these.

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Officers. — Governors of states are elected for various terms, ranging from one year (in Massachusetts and Rhode Island) to four years in about half the states. In most states they are eligible for re-election, but in a few they are not. Their salaries range from fifteen hundred dollars (in Vermont) to twelve thousand dollars (in Illinois). In some states they possess the right to “veto” legislation; in others they do not.

State legislatures consist always of two houses—usually called a Senate and a House of Representatives. Commonly State Senators are elected for four years and State Representatives for two years, but this is by no means universal. In Alabama, Louisiana, Mississippi, and Washington, both Senators and Representatives serve for four years; in Connecticut, Georgia, Maine, Michigan, Nebraska, New Hampshire, North Carolina, Ohio, South Dakota, and Tennessee, both serve for two years; in Massachusetts and Rhode Island, both serve for one year only. They receive pay (Senators and Representatives alike) ranging from four dollars per diem in many states to ten dollars per diem in Nevada, or from two hundred dollars per annum in New Hampshire to fifteen hundred dollars per annum in New York and Pennsylvania. Universally there are more Representatives than Senators—usually twice as many; and they are elected from larger districts, usually formed by combination of two or more “Representatives’” districts.

In regard to their sessions, the various legislatures also differ widely. Some of them meet every year, and remain in session as long as they like; but this is the exception. Most of them are limited to sixty or ninety days; others may stay in session as long as they like, but the members receive no pay after a certain number of days. One or two may meet only once in two years. Some states also reserve to the people the right to “initiate” legislation and to veto legislation (see page 179). All these limitations are further evidences of the deep-seated distrust with which the people everywhere regard their legislatures. They *must*

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have them, but they try to render them as harmless as possible.

Ordinarily the state judicial system consists of a supreme court, circuit courts, and county and city courts, though in some states different names are used. The supreme court has jurisdiction over the whole state, the circuit courts over certain large sections of the state, and the county and city courts over smaller sections. Most cases start in the county or city courts, and are carried to the higher courts only on appeal. Every state has its own rules about this.

Few states have any police force of their own. Their laws are enforced by means of the county sheriffs, township constables, city police, etc. The courts, however, generally have marshals who can swear in deputies, and can call on the sheriffs for aid; and the Governor can, of course, call out the state militia when he thinks the case requires it.

All state judges are elected, but for various terms of office and at various rates of pay.

Recall.—Men are not elected to office in order to provide them with places or (except in rare cases) because the people want to honor them. They are elected in order that they may do work that the people want them to do. If they fail to do this work—still more, if they deliberately betray the people who have elected them—it would seem entirely proper that these should be able to vote them out of office.

This right to dismiss an unfaithful public servant is known as the right of "recall." It has been urged in many states, but so far it has been incorporated into the constitution of only one—Oregon. It was proposed in Oklahoma, but was voted down by the people of that state.

TOPICS

When did your state come into the Union?

Has it had other constitutions before the present one? When was the present one adopted?

CREATION AND FORMS OF GOVERNMENT

Go through the chapter and see how your constitution compares with others in the points mentioned. Where do you find yours better than some others, and in what points might it be changed to advantage?

CHAPTER XLIII

SUBDIVISIONS OF THE STATE

Creation.—All the states are divided into smaller areas known as counties (parishes in Louisiana), and nearly all of them into still smaller areas known as townships or towns. Further, all of them contain organized areas known as municipalities.

None of these subdivisions, however, bear any such relation to the state as the states bear to the nation. Counties, townships, and municipalities have no rights as against the state. The state creates them, fixes their bounds, and endows them with carefully limited powers at its pleasure. They are mere creatures created by the state for its own convenience. The laws of the state are supreme, and those of the subdivisions are merely such as the state permits.

In practice, however, the powers of the subdivisions, when once created, are pretty well defined by custom, and the state meddles little with them. It can do so, however, if it desires, as witness the passage by the Pennsylvania legislature of the so-called "ripper" bills, which deprived certain cities of the right to elect certain officers, and put the appointment of these in the hands of the Governor. Similarly in Missouri, Massachusetts, and Maryland the respective Governors appoint the police of St. Louis, Boston, and Baltimore.

Counties and "Towns."—Although all states are divided into counties, these counties differ greatly in their importance. In some states (chiefly the South and West) they

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are the "units" on which membership in the state legislature is based, and as such are of very great importance. In other states (chiefly in New England) they are unimportant, the unit of government being the "town," and the county being merely a geographical area used chiefly for judicial purposes. In still other parts of the country (as in the Northwest) counties and towns are both important.

Counties and "towns" are very different things—a town or township is not merely another name for a county. In its most general use, of course, a town is a collection of houses—in this sense New York and Mudville are both towns. But a "town," in its special sense, is a small area (six miles square in the West), which may be all city or all country, or may be partly each. In New England, where alone it is found in perfection, it governs itself not by representatives as a county does, but by mass-meetings in which all voters, rich and poor, clever and foolish, have an equal personal standing; it chooses certain officers, generally known as selectmen, who carry out the regulations made by the mass-meeting, but cannot add to them; they must report on and be ready to defend their official acts at the next meeting.

A county, on the other hand, has no mass-meetings; it manages its local affairs through elected representatives (called commissioners, supervisors, etc.), who make the local regulations and *execute* them, too. A county, too, is very much larger than a "town," and in some states is subdivided into "towns."

How radical is the distinction between the county and the town system is seen in the different standing of the county-seat in New England and in the rest of the country. In the South and West the county-seat is the most important town in the county. At it are always published one or more newspapers, and it is usually the social, business, and political centre of the county. In New England this is not so; there the county-seat (unless it also chances

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to be the "town" seat) is usually a mere local habitation of the county offices and the county courts, seldom of any business consequence.

The legislature ordinarily delegates to the counties the control of most things that are of special county importance.

They construct and maintain public buildings, roads, and bridges; tax themselves within limits (see page 182); enforce the state laws by means of sheriffs, prosecuting attorneys, coroners, and other officers; care for the poor, etc.; conduct a "probate" court, which has to do mostly with wills and estates; keep records of wills, deeds, and other papers; administer schools, etc. These are their usual powers, but there are many exceptions. In some states, for instance, there are school districts, road districts, judicial districts, and so on, that do not coincide with county areas. In some states the powers of the county are very small, the control being exercised by the "towns." Counties having large cities within them often fail to exercise some of their powers; for instance, they may leave schools, roads, almshouses, etc., exclusively to the cities. St. Louis, Baltimore, Boston, and New York have entirely swallowed up their counties.

The "town" system, according to President Jefferson, who certainly had no reason to be prejudiced in its favor, is "the wisest invention ever devised" for self-government. In its native home, where the people are used to it, it works admirably so long as the population does not grow too large (ten thousand seems to be about the limit); but it does not bear transplanting well, probably because it makes too great demands on the time and the earnestness of voters who have not been brought up to it.

Nevertheless, New-Englanders who have gone West have tried to take it with them, and have succeeded in grafting certain of its features on most of the Western states, though not all of them. In Illinois, for instance, the *form* is pretty well preserved, but the county, nevertheless,

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holds by far the most prominent place in the public estimation.

In the South, on the other hand, there are no townships at all; there are certain subdivisions of a county made for convenience in administration, but they possess no self-ruling powers.

Townships exercise about the same powers as counties, but of course over smaller areas; they have a constable and a justice of the peace (instead of a sheriff) to enforce the local regulations and to aid the state courts in enforcing state laws. In New England they have absorbed most of the county powers.

Municipalities.—Municipalities are cities which have been “incorporated” in order to enable them to better provide for the special needs which all cities must have—needs which people living in the rural districts cannot possibly realize in the minute detail required. The legislature recognizes this, and delegates to cities power (1) to provide themselves with such conveniences and “utilities” as they may desire and can afford; (2) to impose taxes; and (3) to regulate the conduct of their inhabitants so as to secure the greatest comfort to the greatest number.

Political Standing.—In the South and West the electoral system is based almost wholly on the county. Commonly each county elects so many members to the State Senate and so many to the State House.

In New England, on the other hand, State Representatives are chosen from the towns and State Senators from groups of towns. This system has of late years worked serious injustice to the residents of New England cities, for all towns are politically equal, no matter what their population may be. In Connecticut, for instance, the town of Marlboro, with only three hundred and twenty-two inhabitants, has exactly the same representation in the legislature as has the city of New Haven, with more than one hundred thousand inhabitants. The system can be changed only by an amendment to the state constitution.

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Cities, *as such*, are not represented in the legislatures; they appear there only by right of their existence as parts of counties and towns.

TOPICS

What is the reason for having the police of certain cities appointed by the state legislatures instead of by the governments of the cities themselves?

Can you explain historically how counties happen to differ so widely in importance in different parts of the country?

Are your schools managed by county or town boards?

CHAPTER XLIV

ELECTIONS

VARIOUS methods have been devised to compel a government to suit its action to the changing desires of the people. In all countries in which the people possess any authority over the government this power is exercised primarily by elections, which enable the people to revoke the authority of any man or men of whose acts they disprove. Once in so often the whole or a part of the personnel of the government is elected. In the United States the entire general government is elected for a certain definite time, and holds office for that time, even if the feeling of the country should become violently opposed to it. In England the portion of the government that the people control is elected for an indefinite time, which may be anywhere from a few days to seven years; if the feeling of the country changes, another election may be called immediately. In France and Germany still other ways are followed. But in all "representative" countries a part at least of the legislature is elected by the people and is responsible to them.

Elections in the United States are almost exclusively state affairs. In reality we have no such things as national elections. What we call national elections are really state elections held for a national object. The President and Vice-President, for instance, are not elected by the popular vote at all; they are elected by "electors" that are chosen by the states (see pages 159-160). United States Senators are elected by the legislatures of the states. Rep-

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representatives in Congress are elected by the people, but are apportioned to the states according to population; are elected from districts laid out by the legislatures of the states; present certificates from the Governors of the states as proof of this election; send their resignations (if they do resign) to the Governors; and, in case of vacancies, are chosen at special elections called by the Governors. All other United States officers are appointed—not elected at all.

This is not to say that the Constitution gives the national government no control over elections. It gives it great control over them—so great that Patrick Henry declared that the power in this respect would enable it to defeat the very end of suffrage. And it has exercised this power in regulating the elections of Senators (see page 138), or Representatives (see page 262), and of presidential electors. During the reconstruction days it had soldiers at the polls to supervise the voting; and so late as 1894 the United States Courts, in their discretion, appointed marshals and supervisors to watch the voting. This was done in New York City for the last time in the presidential election of 1892.

Nevertheless, all elections (even all Federal elections) are held by the states and not by the nation. The entire electoral machinery is in the hands of the states; the United States has supervised it and has “made and altered” state regulations concerning it, but except in “reconstruction” days, when the status of the seceding states was anomalous, it has never taken possession of it.

The states, then, have to provide for the election of their Representatives in the national government; they have also to elect a great body of state officers; and their subdivisions have to elect hundreds of county, township, and city officers. As each state makes its own laws, it is not surprising that great differences exist in regard to almost everything connected with our elections. The resemblances, however, are more important than the differences.

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TOPICS

Is there greater interest shown when there is an election of Federal officers or of state and city officers?

From the point of view of importance for us, which should excite the greater interest?

Why is a failure on the part of the citizens to participate in an election a bad thing in a democracy?

CHAPTER XLV

POLITICAL PARTIES

Origin of Parties.—In every community part of the people want to stick to old ways and part want to try new ways. The first are Conservatives and the second are Radicals. The Conservatives always want to “let well enough alone”; the Radicals always want to try to find something better. Between them are all variations of thinking. This is the first great division of political opinion.

A second great division is between the people who want the government to do all it possibly can, and the people who want it to do as little as it possibly can. At one end of this scale are the Socialists, who want the government to run everything; at the other end are the Anarchists, who object to any government at all. Between these, again, are all grades of opinion.

A third division is between those who are thrifty (or stingy) and object to the government spending money without good cause, and those who are liberal (or wasteful) and are willing to throw money at the birds if somebody asks them to do so. Most people, of course, do not go to either extreme.

This is the foundation of political parties. People who look at things from one or the other point of view naturally get together to have the laws made in consonance with their ideas, and the first thing we know they have formed a party. All the electoral machinery which obtrudes itself so strongly on our attention once in so often

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is simply designed to enable us to select the party which we think will most nearly meet our wishes in the conduct of the national, state, and city governments, and to give it control of those governments.

Parties in the United States.—The first parties in the United States were the Federalists and the anti-Federalists—the party that believed in a strong central government that should exercise all the powers that could be inferred from the Constitution, and the party that believed in holding the general government to the strict letter of the Constitution and reserving everything possible to the states.

In time the anti-Federalists became the Republican party, then the Democratic-Republican party, and finally the present Democratic party. Similarly the Federalists became the Whigs, and the Whigs the present Republicans.

The United States, like most constitutional countries, has always had two great parties and several small ones. The great parties usually divide between them the bulk of the voters. The smaller parties are usually composed of men who take a very positive stand as to some one policy—as Prohibition, for instance—which appears to them to be of far greater importance than it does to most of their fellow-countrymen. In some countries three great parties have coexisted for a long time, but in the United States they never have. As soon as one of the small parties has impressed itself sufficiently on the country, one of two things has happened: (1) one of the large parties has adopted the shibboleth of the new party and has absorbed it; or (2) the new party has absorbed one of the large parties. Thus the new Republican party swallowed the bulk of the old Whig party in 1856, and the old Democratic party swallowed the bulk of the Populist party in 1900.

The reasons for this are obvious. If more than one-half of the voters favor a certain course of action and less than one-half oppose it, and if the majority divides its vote between two parties which differ on some other question or on details of the same question, the minority will win,

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and will be able to defeat the will of the majority as to that question. So well is this understood that small parties are often formed, not with any hope of winning, but solely to draw away voters from one or the other of the great parties and thus throw the victory to the other. Of course, such an intention is always strenuously denied, no matter how obvious it may seem. Generally speaking, to vote for one of the small parties is to throw away one's vote *so far as the particular election* is concerned. Such throwing away, however, may have a strong moral influence on the *future*.

Many small parties have come and gone, and some remain. At the presidential election of 1908 five small parties had tickets in the field—Socialist, Prohibition, Social Labor, Populist, and Independent. Together they polled more than eight hundred thousand votes, or more than five per cent. of the total vote cast.

Platforms.—The essential part of each party is its "platform," or declaration of principles. These platforms are prepared and adopted by national conventions, and are made up of "planks," each setting forth the party's ideas on a certain subject, and pledging the party more or less definitely to act in accordance with those ideas. Some of the smaller parties put only a single plank in their platforms, or put such emphasis on a single plank that nobody cares what they say on other subjects. The great parties, however, almost always have voluminous platforms, in which they seek to incorporate planks on all possible political questions. Some of these planks are inserted because the party leaders think they will "catch" votes, others are put in because the leaders fear that to leave them out will "lose" votes. On issues which are not pressing, or on which the party mind is not made up, the platform usually "straddles"; that is, its language either means nothing or it means too much—can be construed both for and against a certain line of action.

State platforms are usually rather vague as to most

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national issues, contenting themselves with "pointing with pride" to things their party has done and to "denouncing" things the other party has done. Then they go on to express the party views on topics of *state* interest.

Similarly county and city platforms declare the positions of the parties on subjects of local interest.

State and Local Parties.—National platforms are important and valuable. They enable the voters to know for what and for whom they are voting, and, generally speaking, they are *ultimately* lived up to by those elected on them. State and city platforms would be valuable if the people generally took account of them in casting their state and city votes. As a matter of fact, however, most people vote for the nominees of their national party in *all* elections, with little regard either to their identity, records, or promises.

The national Republicans, for instance, may declare in favor of a high tariff, the state Republicans may declare in favor of a liberal policy toward corporations, and the city Republicans may declare in favor of building a city waterworks. There is no reason why a man who favors the first of these should also favor the other two; yet in such a case thousands of Republicans would follow their party lead and vote for all three, and similarly thousands of Democrats would vote the other way. A man usually *becomes* a Republican or a Democrat because he believes in the declared objects of that party in regard to the coinage, the tariff, the colonies, and so on, but he *remains* a Republican or a Democrat in state and city elections, although these have nothing to do with the subjects mentioned.

The average voter supports his party at all elections, although in many cases he knows very well that its leaders in city and perhaps state affairs are often, if not usually, men who care nothing at all for the principles of the party, and have adopted its banners and watchwords merely to help them to win.

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The only excuse for this sort of thing that is worth considering at all (and it is an inadequate one) is that it is necessary for the party to win city and state elections in order to keep together an organization that will enable it to win national ones. We are all so busy with our private affairs that we have turned our political duties over to professional politicians, who attend to the work for us. These professionals have got to live; they do not attend to our work for our sakes but for their own, and about the only way we can secure their aid is to give them the local and other offices when we win, and thus pay them by giving them salaries or enabling them to pay themselves from the public treasury. We like to denounce professional politicians as rogues, but it would be much more to the point if we were to denounce ourselves for our own neglect of political duties, which makes the professional politician almost a necessity. Such men are "mercenaries" just as were the old mercenaries who fought for any one who paid them. If we are not willing to stand up for our own rights and prefer to depend on hired helpers, we have no right to denounce our hirelings for helping themselves to the "loot."

On the other hand, the tendency to stick to a party is not necessarily a bad thing. If a man is well satisfied with the attitude of his party on most important subjects, it is only common sense for him to defer to its judgment on unessential points. If he "bolts" every time he disagrees with it on trifling matters, he is very likely (if there are enough of him) to so weaken it as to destroy its power to achieve the big things in regard to which he does agree with it. Where no moral question is involved the question is always and ever one of expediency.

Bosses.—In every body of men there are a few who lead and a host who follow. The timid or the careless or the stupid sit back, and let the bold and the resolute and the clever manage things. The personal element always counts. Every party in the nation, in the state, in the city sooner

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or later evolves a little clique that runs things, chiefly because it takes the trouble to run them. And nearly every clique, in turn, evolves a leader—a man whom the others are content to follow because they have found that under his guidance they get what they want, whether this is a salary, a “graft,” or a mode of action. This one resolute man is called the “boss” because he gets his own way in most things.

The boss stands as a symbol of all that is worst in American politics—for corruption, graft, bribery, and all the rest of it. As a matter of fact, however, the boss is not half so guilty as are the “good” citizens who blindly vote him into office or refuse to vote him out.

Party Rule.—Party rule has certain unavoidable injustices. Take a certain state where one party has a slight majority in almost every legislative district; *all* the offices in that state will be held by that party—Congressmen, the Governor and other state officers, and both houses of the legislature. The other party, though it may muster only a few hundred votes less than a majority, will not be represented in the government at all unless it chances to have a preponderance in two or three small districts. We are so used to this that it seldom strikes us as unfair, yet it undoubtedly is.

The trouble is, how to change it. In Europe, in the Middle Ages, it was gotten over by the “guild” system, by which each *trade* elected its representative to the city council; but such a system is scarcely practicable nowadays.

Illinois tries to solve it by giving its citizens a “multiple” vote for some offices. Each legislative district, for instance, elects three members of the legislature, and each voter has three votes. He may cast them all for one candidate, or cast one and one-half votes for each of two candidates, or one vote each for three candidates. This plan has worked fairly well; there is scarcely a district in the state where the minority has not at least one representative.

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Boston is trying to abolish *all* party rule. No party nominations are permitted, and any one may run for office who can get five thousand signers to a petition asking that he do so.

TOPICS

Find out about some cities in this country and abroad that are trying the experiment of running their governments on a purely business basis instead of a political one.

Are the local elections decided on national party lines as much now as formerly? Give reasons.

Why do the great national parties like to have control of the politics of our large cities? Why have they used their influence to have Election Day for city and state officers come at the same time as the election for Federal officers?

CHAPTER XLVI

NOMINATIONS

Choice of Candidates. — Platforms are necessary to party government, but they cannot be carried out except by electing men who will support them. Further, as there are usually numerous candidates, all of whom are ready and willing to support the platform, it is necessary for the party to choose, or “nominate,” some particular one for each office; otherwise those who are opposed to the platform may defeat it altogether by concentrating on a single man. But as every member of the party has as good a right as any other member to aspire to office, some means has to be found of deciding between the candidates. Out of this necessity has grown up the nominating machinery that belongs to every party.

The object of all nominating machinery is to select the man who can best assure the party victory—not the best or holiest or ablest man, but the man who, *all things considered*, can poll the largest vote, and thus secure the success of the party principles. The party is more important than the individual, and the triumph of the party principles are more important than the honoring of any man or set of men. A certain percentage of the voters will always support the party, no matter whom it nominates, but another percentage (an increasingly large percentage nowadays) will be influenced more or less by the personality of the nominees and by the manner in which they were selected. Hence it is important (if the election is likely to be close it is very important) that every man nominated

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shall add strength to the whole "ticket," that the whole ticket shall be so balanced as to secure the most general support, and that as little bitterness as possible shall be stirred up over the nominations.

Of course, at certain times and in certain localities, the thick and thin supporters of a party are in such an enormous majority that it does not matter (from a party point of view) who is nominated; the party could, as the phrase goes, elect a "yellow dog" if it wanted to. Such a condition of affairs, it is perhaps needless to say, is very bad for any community.

Methods of Nomination.—Candidates for office are nominated in three ways: (1) by conventions, (2) by primaries, and (3) by petition.

A convention, or caucus, is an assemblage of men chosen by the voters of a party to draft a platform and to select nominees for office; a primary, or primary election, is either an election to elect delegates to a convention, or it is an election to choose the nominee directly—without the aid of a convention.

Presidential nominees are named nowadays by national conventions; *delegates* to national conventions and *candidates* for state offices are generally named by the state conventions, but sometimes by state primaries; delegates to state conventions and candidates for *county* or *township* offices are generally named by county or town primaries, but sometimes by county or town conventions; candidates for city offices are generally selected by city primaries. In most states candidates can also be named by petition (see pages 275, 284).

Conventions.—Under the convention system the first step is the selection of delegates. For years the law took no account of this matter; delegates were named (rarely) at party mass-meetings and (more commonly) at a primary election conducted exclusively by the party and for the party, without any supervision by the state. Later, to check frauds that corrupted the nominating machinery at

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its very source, the state took charge of the party election and conducted it under rules much like those it applied to ordinary elections, the chief difference being that only members of the party could vote. Proofs of party membership differ in different states; in some previous registration and proof that the would-be voter has supported the party at the last regular election is required; in others a mere pledge of future party fealty is sufficient.

The delegates chosen at these elections may be county delegates. If so, their duty is to meet in county convention and make nominations of certain of their number as delegates to the *state* convention.

The *state* delegates so named (or state delegates chosen directly by the people of the state) meet in a state convention and organize; and in due time they put forth a platform and nominate candidates for state offices. Ordinarily geography plays an important part in the selection of these; the Governor and Lieutenant-Governor, for instance, are seldom chosen from the same section of the state. Usually there is a "slate" prepared by the leaders containing the names of the men whose nominations they desire, and usually the slate is adopted; but any delegate may "put up" an "opposition" candidate, and the convention may and often does "break" the slate by selecting such a candidate.

The state convention generally selects delegates to the national convention. Two national delegates and two alternates (to take the place of the first in case these cannot attend) are selected by a caucus of the delegates from each Congressional district, and four national delegates and four alternates are selected by the convention as a whole. These delegates together constitute the state "delegation" to the national convention, in which each state has twice as many representatives as it has Senators and Representatives in Congress.

Primaries.—In the primary system the methods are much the same, except that the party voters, instead of

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voting for delegates who meet and nominate candidates, vote directly for the candidates at primary elections, which nowadays are carefully regulated by law. Generally any one who desires may offer himself as a candidate at a primary election. In some states, however, would-be candidates are required first to present petitions signed by a certain percentage of the party voters.

According to the Oregon system a primary nominating election is held thirty days before a general election, by which the several parties declare who shall be their nominees for the various public offices. The primaries of all parties are held at the same place upon the same date; and a member of one party is prevented from voting at the primary of another party by the fact that all voters must be registered, and, when registering, must declare the party with which they wish to be affiliated. In consequence the election officers hand a primary voter a ticket upon which is printed only the names of those who aspire to nomination on the ticket of the party to which the voter belongs.

Thus, a Republican is given a Republican ticket, a Democrat a Democratic ticket, etc. Those receiving the highest number of votes are declared to be the nominees of their respective parties, but independent candidates can have their names presented to the people at the general election by filing with the county clerk (for a county or municipal office) and the secretary of state (for a state office) a petition signed by ten per cent. of the voters of his precinct, county, or state, as the case may be, not later than fifteen days before the election. At the general election all the names of candidates are printed on one ballot with the designation "Democratic," "Republican," "Independent," etc., opposite his name. These names are printed under a heading of the office for which the aspirants are candidates, and the names are arranged alphabetically.

Convention and Primary Systems Compared.—Both the convention and the primary systems have certain draw-

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backs: the convention is likely to be dominated by a few leaders, who may patch up a highly objectionable slate which will yet "go through" by what has been termed the "cohesive force of public plunder"; each faction concedes part of the "pie" to the other factions in return for similar concessions to itself. On the other hand, primaries are enormously expensive; few poor men can afford to go into them unless they hope to recoup themselves later at the public expense. Further, they are open to the objection that in them it is not possible for two or more candidates who stand for about the same thing to combine against a third candidate who stands for a very different thing; hence the candidate who wins may really have been named by only a comparatively small proportion of the party which is expected to support him later at the polls.

Petition.—Commonly a candidate who cannot secure the nomination of one of the regular parties can still be nominated by "petition"; that is, if he can get a certain percentage (generally five per cent.) of the voters of the state to sign a petition for his nomination, his name will be placed on the ballot as an "independent" candidate. In Boston, for instance, *all* candidates for high city office are nominated by petition, no party nominations being permitted. Boston did not choose this plan herself; it was forced on her by the Massachusetts legislature, which took care not to apply it elsewhere in the state.

TOPICS

Why are primaries so expensive?

Explain the system of nominations in force in your state, and compare it with the Oregon system.

What is the object of "direct primaries"?

Why does the control of the primaries by a party machine mean so much to the machine?

CHAPTER XLVII

CAMPAIGNS

POLITICAL campaigns are like military campaigns. They cannot be won without organization and money. Both of these are decried by so-called reformers, but both are entirely legitimate within certain bounds.

Need of Campaigns.—Before any government can obey the wishes of the people, it must find out what those wishes are. The theory of our plan of government is that the people want to govern themselves, that they are willing to take some trouble to inform themselves as to what ought to be done, and then that they are determined enough to insist that it shall be done. It has turned out, however, that a very large percentage of them are too dull, or too lazy, or too much engrossed in other affairs, to take an effective interest in their government. It is estimated that about two million voters stayed away from the polls at the presidential election of 1908—and this in the face of the most strenuous appeals to them to get out and vote. How many more would have stayed at home if it had not been for the appeals is not pleasant to contemplate. The fact really seems to be that a very large proportion of the people, instead of being eager to regulate the government, cannot be persuaded even to declare formally their opinions about it. To get them to do so campaigns are necessary, and campaigns without organization and money are impossible.

Organization.—Political machinery has been brought to a high pitch of perfection in the United States. Every

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important political party has national, state, county, city, and district "headquarters" where its activities centre. Each headquarters has a more or less perfect list of the voters in the area it represents, with more or less complete notes in regard to them. Some will be recorded as "safe"—men who can be depended on to vote and to vote "right"; others as followers or friends of such and such a man, who will vote as he wishes; others as likely to forget to register or to vote; others as corrupt; and others as willing to work for the party. Fresh notes are added as material comes in.

When election draws near the "workers" are assigned to duty. In Pennsylvania, where the Republican machine has reached its greatest perfection, about every tenth Republican becomes a voluntary worker. Each has charge of about ten voters. It is his duty to see these ten, talk with them, and find out more or less casually how they are going to vote. If they are "wobbling," he must try to stiffen them; if he cannot do this himself, he must try to learn the names of their friends and get them to use their influence. If they are angry, he must find out what will placate them. He must see that they register on the day set, and that they vote when the election comes round. At certain times he must send a report to headquarters as to their status, and from these reports headquarters can tell very accurately where the party is gaining and where it is losing, and can try to supply a remedy.

Expenses.—The legitimate expenses of a campaign are many. Speakers must be employed to set forth the claims of the party to election, banners must be strung, bands engaged, photographs of candidates scattered broadcast, advertising paid for, enormous bills for printing and for postage settled, and rent and salaries for headquarters provided.

All these expenses are legitimate. No sensible man objects to them. But the necessity of spending money for them serves as a cloak for hiding many decidedly illegiti-

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mate expenditures. Various states have tried to stop such by the enactment of "corrupt practices" acts. New York led the way in 1890, and other states have followed.

The most effective part of these acts is that calling for publicity in campaign expenditures. Fourteen states now insist on this, Texas and Colorado having perhaps the most effective laws. In most states either the candidates or their managers are obliged to submit under oath a statement of expenditures, but in Texas and Colorado both have to do so, thus preventing all dodging of the issue.

The Virginia law requires all candidates to file a true statement of expenditures, and if it can be shown that the successful candidate has used money corruptly, or that it has been so used for him by others with his knowledge and consent, he forfeits his office. He is required to swear that he has used no money other than that shown in his filed statement either directly or indirectly.

The manner of publicity varies in the different states. In some of them a statement must be filed with the state officials; in others it must be given to the public in pamphlet form; while in still others the statements must be printed in the newspapers.

Money for campaign purposes is raised in various ways, some of which are generally considered proper and others improper. Corporations and wealthy men are usually called on to contribute, but this practice is falling into disrepute because it is understood that those who contribute expect to get something for their money, and this looks too much like a bargain and sale to please the moral ideas of the community. The United States law forbids the "assessment" of United States government office-holders, but the practice is very common in the different states. Perhaps the largest amount comes from "assessing" nominees for office or from voluntary expenditures by the candidates themselves.

A number of states tacitly indorse the assessment of candidates by fixing a limit on the amount that may be

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demanded. A recent law on this subject is that of Colorado, which provides that nominees may be assessed not more than forty per cent. of the first year's salary of the office to which they aspire. In Colorado the state collects this money from the nominee and turns it over to the "state chairmen" in the proportion of twenty-five cents for every vote cast by their parties at the preceding election. These state chairmen are to give bond for the proper expenditure of the money, and a strict accounting is required. They must send one-half of their respective allotments to the county chairmen of their parties. According to the present population of Colorado, the total amount furnished to all parties is about sixty-five thousand dollars.

Many states limit the amount that a candidate may spend, regulating it by a sliding scale which takes account of the salary and honor of the office sought.

TOPICS

Can our republican form of government continue to exist if overwhelmingly large numbers of voters stay away from the polls?

What result would be sure to follow, and what would be the effect on the prosperity and safety of the country?

Are political campaigns carried on with more or less benefit to the country as the years go on?

CHAPTER XLVIII

BALLOTING

Early Methods.—In early days when a man wanted to run for office, he announced his candidacy and asked the support of the voters. When election day came he and his friends went to the polls with “tickets” printed at their own expense and urged the voters to cast them for him.

Later, when political parties became well established, all the candidates on one side united in a single ticket, or ballot, and those on the other side in another ballot, the ballots being printed at the joint expense of the candidates. After a while a place on this ballot grew valuable; *every* man on it got the support of the friends of *each* man on it; so the men who made it up began to demand concessions from those whose names they placed on it. Any one who was left off had to run “independently,” which meant either that he had to organize a party of his own and get other men to go in with him for other offices so as to make up a full ticket, or else he had to print and circulate (at his sole expense) “pasters”—strips of paper with his name on one side and mucilage on the other, so that they might be easily pasted on the regular ballots over the name of the candidate he was opposing.

Australian Ballot.—This system, or, rather, lack of system, which at one time prevailed everywhere, permitted all sorts of frauds, and was supplanted about 1891 in most states by a more or less modified form of the so-called Australian ballot system.

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No two states nowadays have exactly the same system, but practically all of them follow the same general plan. According to this the state prints an official, or blanket, ballot, on which appear the names of all the nominees of all the parties for state offices. Usually these names are arranged in columns—one for the Republicans, another for the Democrats, and so on—each column having at its head a vignette, such as an eagle, a rooster, an arm and hammer, etc., that has been adopted by the party and that helps the illiterate voter to identify its candidates. A few states have all the names of all the candidates for each office arranged alphabetically under the name of the office, sometimes with “Dem.” or “Rep.” or “Ind.,” and so on, after their names, to show to which party each belongs, and sometimes without any such help. This last form is generally considered to be intended to mislead careless or illiterate voters (where these are massed in one particular party), and prevent them from voting as they wish, but is advocated by a few eminent men who object to all *party* government.

On the ballots of the states that have the column system a voter can put a sign X under the vignette of the party he wishes to support (this constitutes a “straight” vote for the party’s nominees), or, instead of a single cross at the head of a column, he can sprinkle crosses all over the ballot, putting one opposite the name of each man he wishes to vote for, but taking care not to vote for two men for the same office; this constitutes a “scratched” ticket. Some few states permit “pasters” to be used. Commonly tickets are not distributed freely, as they were under the old system. Each voter receives a single ballot when he goes to the polls, enters a booth where he can mark it in secret, and drops it into the ballot-box, sometimes enclosed in an official envelope.

Generally no ballot other than the official one can be used, so a party whose nominees or a particular candidate whose name is left off the ballot cannot possibly be elected.

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The right to a place on the ballot is therefore valuable, and has been carefully safeguarded.

The men whose names are placed on the ballot as nominees of each party are those that have been selected by a convention, or primary, of the party (see pages 272-275). Commonly any party whose nominees have received a certain percentage (usually five per cent.) of the total vote at the next preceding election is entitled to a column on the ballot. Parties that received a less percentage, or new parties that received no vote at all, can get on the ballot by presenting a petition signed by a certain number of voters.

Party Labels.—If a party splits between elections each section will probably be very anxious to retain the party title and will make desperate efforts to do so. Nowadays in most states any dispute is settled by the state courts, which will declare one or the other faction to be “regular,” and will command the proper official to place its nominees on the ballot as nominees of the party. The other faction can get on by petition, but must do so under another name.

Similarly the right of an individual to figure on the ballot as the nominee of a particular party is valuable, especially where the party is so overwhelmingly in the majority that a nomination is almost equivalent to an election; no man can be deprived of his right to a place on it except by established methods; the courts will stop any attempt to deprive him illegally or fraudulently of his rights. The law recognizes that such questions are of the very highest concern, involving not only the right of the individual to be voted for, but also the right of the public to vote for whom it desires. Hence disputes on such subjects are usually given precedence over other cases and are heard and decided at the earliest possible moment.

“Independent” candidates can get on the ballot only by petition signed by the required percentage of the voters.

Prevention of Fraud.—The modern ballot law, in addition to the use of the blanket ballot, requires that before

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an election all voters shall "register" their names and addresses, and provides that no one can vote who has not registered. Registration enables each voter to be looked up and his right to vote investigated; and it helps to prevent "colonization" (bringing voters from another state or district).

The modern law, by requiring a voter to prepare his ballot in secrecy (unless he is illiterate, in which case he may be helped by a friend), materially checks bribery by making it impossible, or at least very difficult, for a man who has bought a vote to make sure it has been cast as he wishes. It also has checked the inordinate use of money at elections by requiring that each candidate must make public, shortly after the election, a sworn statement as to the amount of money he has spent in furthering his candidacy, and with details of the way he has spent it. Some states limit the amount he may spend, the total depending on the office to which he aspires. Oregon, for instance, lets a man spend eighteen hundred dollars when running for United States Senator.

No ballot law, however, can wholly stop "impersonation" (the voting by one man on another man's name), or "repeating" (the voting of one man several times at different polling-places), ballot-box "stuffing" (adding illegal votes to those deposited by the voters), or "counting out" (miscounting the votes after the polls are closed). These can only be prevented by party vigilance.

For the convenience of the voters, and to help prevent the casting of fraudulent votes, each state and city is divided into voting "precincts," usually of small area, in each of which a polling-place is provided. Philadelphia has about one thousand of these, and Greater New York has more than five thousand. Voters can vote only in the polling-place of the precinct in which they live. As each casts his vote, his name is checked off on the registry list.

Each party that has a place on the ballot is ordinarily entitled to at least one "judge" and one "inspector," or

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“watcher,” at each polling-place. Some states, however, allow such representation only to the two largest parties. Most states now provide that no other party “workers” shall be permitted within a certain distance of the polls; this provision, however, is too often a dead letter.

Watchers at polls are not supposed to try to influence the voters; their duty is to “challenge” a voter if they doubt his right to vote, and to object to any other attempt at fraud that comes under their notice. When a point is raised the “judges” decide it at once. Later the judges count the votes and the watchers watch them.

TOPICS

Get a sample blanket ballot if possible, and study it. Is it a simple matter for a man to thread his way through it, and vote just as he wants to?

What changes have been proposed in the interests of the ordinary voter?

What proportion of ballots in your town or county were thrown out at the last election because improperly marked?

Go through the chapter and consider each point in regard to the last important election held in your town.

BOOK V
CITY GOVERNMENTS



PART I—POWERS
PART II—ORGANIZATION

PART I.—POWERS

CHAPTER XLIX

GRANT OF POWERS

Domination of the Country.—The modern city government is only about one hundred and fifty years old. After the fall of the Roman Empire, during and before which cities ruled the world, the country districts got the upper hand and kept it through the Middle Ages and afterward, until the great industrial development of modern times compelled a change by the enormous increase it brought about in the wealth and population of the cities. If ever industry shall decline (as by the exhaustion of the world's stock of metals) the city will decline with it and the country will regain its domination; until then cities will probably continue to increase.

A century or two ago practically all governments were kingly, or aristocratic. Representative government in the modern sense scarcely existed, and when it did it was by areas and not by population. In England, for instance, "rotten boroughs" dominated. These were thinly inhabited districts which were entitled to the same representation in Parliament as the thickly settled towns. (Much the same condition prevails in Connecticut to-day, where eleven cities containing half the population of the state have only twenty-two votes in the legislature against two hundred and thirty-three votes held by the rural half.) The country had the power and refused to give it up (in England) until 1832-85, when it was forced to do so by a real though peaceful revolution. On the Continent of

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Europe the towns gained political recognition even more slowly.

Home Rule.—Even after the equal right of people living in cities to aid in the government of the country was recognized, the government was slow in conceding to the cities control over their own affairs.

In the United States, in early days, the legislatures undertook to regulate even minor affairs. The Governor of New York State appointed the Mayor of New York City until 1821, and until as late as 1874 the legislature had to give annual permission to New York City to levy taxes; if the legislature failed to pass such an act in any year, New York would have been without money to carry on its government. Similarly, Boston did not receive a city charter till 1822. Even to-day such interference has by no means ceased. In Baltimore, Boston, and St. Louis the right to appoint the police is reserved to the state. (Boston is usually Democratic and Massachusetts Republican; St. Louis is usually Republican and Missouri Democratic; hence perhaps this condition.) In Pennsylvania certain cities have been deprived recently by the legislature of the right to elect their Mayors and other city officers, and the appointment of these has been vested in the Governor. Boston's charter was recently taken away from it by the Massachusetts legislature and the people compelled to choose between two brand-new schemes of government, neither of which was desired by more than a very small percentage of its citizens. The states (through their legislatures) are still continually intermeddling in city affairs. The tyranny exercised by the rural districts (which often control the legislature) over the city, though steadily growing less, is still an old and well-founded cause of complaint all over the country.

For a long time cities could be "incorporated," or "chartered," only by a special act of the legislature, and such is still the case in many states; but the tendency is growing to substitute for individual acts a general act

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specifying the terms on which any village or town may incorporate, and outlining the powers it may exercise.

More recently, in several states, full "home rule" has been granted to cities. In Colorado, Missouri, Washington, Minnesota, and California the state constitutions provide broadly that cities with a certain population may adopt any charter they please and exercise any powers they desire so long as these do not conflict with the constitution of the state. The provisions in each of these states differ slightly from those in the others. Minnesota and California are the least liberal. Minnesota requires the legislature to pass an "enabling act" before the city can form a charter, and California reserves to the legislature the right to reject (but not to amend) a charter. All, however, make the cities, once chartered, practically independent of the state. State laws, of course, still apply to the people of the cities, just as United States laws apply to the people of the states.

Extent of Powers.—In Europe municipalities generally possess "residual" powers; that is, they may do anything they are not forbidden to do. In England and in the United States (except as stated in the last paragraph), on the contrary, they may not do anything that they are not especially empowered to do by the state, and all grants of power to them are "construed strictly"; that is, all doubts are resolved *against* them.

No powers belong to a city by right; *all* of them depend on the terms of its incorporation and on the pleasure of the legislature. Furthermore, these powers differ both in character and in extent in every state and in almost every city. All statements about them, therefore, must be understood only in the most general way.

Most villages adopt the corporate form because they want special local improvements, such as waterworks, gas-lighting, paved streets, and so on. The state and county governments, of course, have power to provide these things, but ordinarily neither will do it, because the inhabitants

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outside the town object to spending, for the benefit of one small section, money raised from the whole state or county. The simplest way for a town to get these things is to incorporate and tax itself to raise the money to pay for them. In the South and West, where the counties are large and the township system is poorly developed, mere villages are likely to be incorporated; while in New England, where the "towns" are very well developed, real cities of ten thousand inhabitants sometimes grow up without incorporation, finding that the government of the somewhat larger "town" supplies all their needs.

Importance of Cities.—Theoretically cities are merely parts of the state, which can overturn their governments at will; practically they often dominate the state and impose their will upon it. Legally their governments are comparatively unimportant; practically they are quite as important as those of the state, and not so very far inferior to that of the nation.

The national government touches the average man so indirectly (except in case of war) that its effects, great as they are, are scarcely felt and seldom recognized—though they would be quickly missed if it were to disappear. State governments touch most people by some of their laws, but few people by very many of them; trust laws, labor laws, marriage laws, prohibition laws, criminal laws, and so on, are each directed at a particular class of people usually at a particular time, and affect the rest only in a negative way. But city governments affect every class all the time; they directly control the food, the health, the safety, and the comfort of all city dwellers (who, in 1900, constituted one-third of the population of the country), and they indirectly control the actions of pretty nearly all rural dwellers as well. Consequently to the individual they are supreme in importance.

Strange to say, however, they are the least considered subdivision of the government. Thousands upon thousands of people who grow wildly excited over the election

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of a President or a Governor do not take the trouble even to vote for the Alderman from their ward, heedless of the fact that their property, comfort, and very lives depend on that Alderman's honesty and efficiency.

The reason for this lack of attention to city affairs arises from two main causes: first, because many people believe that city governments are so hopelessly bad that it is not even worth while to try to improve them; and, second, because few people realize how dependent they are on the city government for most things that make life worth living.

American city governments *are* bad; there is no denying this; but they are not hopelessly bad by any means. Popular belief to the contrary notwithstanding, they have very greatly improved within the last few years, and the "commission" system of government, which has now been adopted by three states, gives promise of greater improvement in the near future (see pages 341-342).

Realization of the part city governments play in our lives can only be had at the cost of some study. The usual powers of incorporated towns or cities extend over all local matters. The levying of local taxes; the preservation of the public health; the regulation of building construction; the laying and maintenance of streets; the building and operation of waterworks; the management of schools; the dispensing of charities; the protection of the city against fire; the ownership of public utilities; and the chartering of public-service corporations—all are in their hands.

Taxation has already been fully discussed (see pages 182-191), and will not be considered further. The other subjects are considered in the following pages.

TOPICS

What is meant by a "peaceful revolution"?

Find some statistics concerning the growth of cities since the early days of the republic. What

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proportion of the population lived in cities in 1790 and what proportion now? What were the six cities of the country in 1790, and what was the population of the largest one? What was the population of the six largest cities in 1900, and how many were there in 1900 larger than the largest of 1790? What can you say of the change in character of the population during the century? See A. B. Hart's *Actual Government*, pages 181 and 201.

What bearing have these figures on the slow development of the power of cities to manage their own affairs?

CHAPTER L

PUBLIC HEALTH

WHILE the health of an individual depends largely on himself and on the constitution with which he was born, the public health depends almost exclusively on the conditions under which the mass of people live. The enormous majority of these, particularly in cities, have not the power, even if they have the will, to alter their surroundings to any great extent. They are compelled to live in neighborhoods and on food not too expensive for their purses, and they are for the most part chained to their work. If the city government permits their surroundings, or any of them, to be unhealthful, most people can do nothing but submit.

Houses.—Of very great importance to our health is the way in which we are housed. The choice of a dwelling may seem at first blush something with which the community has nothing to do, but reflection shows that this is not so.

Builders are notoriously reckless, and it is surely the duty of the city government to see that they do not sell death-traps to people who have no means of learning the dangers to their health that may be hidden behind the nice new paint that makes the house look so cheerful. The only way the city can prevent such actions is by preventing the building of such houses and by "condemning" them if they become unhealthful after they are built. This subject is considered below under "Building Regulation," and need not be discussed here, except to point out that unhealthful dwellings are a menace to the whole city, and not merely to those who are forced to live in them. Disease starting in the foulest alley tenement may easily be and

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continually is carried direct to the homes of the wealthiest. (See also pages 299-300.)

Disease.—Outside our dwellings, we all have to deal with the carelessness, ignorance, and misconduct of our neighbors.

Disease comes to all, and is often contagious or infectious. Some forms of it can be very readily warded off if we are warned of their approach. Smallpox, for instance, is scarcely even troublesome nowadays because vaccination is so ready and easy a preventative. Scarlet fever, on the other hand, as well as some other diseases, can only be kept away by isolating the patient and fumigating his clothing and surroundings. To protect the community, people suffering with contagious diseases are quarantined, mildly or rigidly according to the virulence of the disease. In the mildest diseases, such as measles, it is often sufficient to require the patient to be kept in an isolated room; in the severest, it may be necessary to take him to a pest-house. The community protects itself by insisting that the private right to go about and earn one's living must yield to the general right of the community to preserve its health.

Even after our neighbors die they may continue to menace our health. In many places cemeteries are placed on ridges, at the foot of which wells are dug for domestic supply. Sooner or later these will be polluted, often with death-dealing germs. The location of cemeteries should therefore be supervised. So also regulations compelling prompt burial and permitting the shipment of bodies only under strict supervision are absolutely essential to guard the health of the community.

Water.—Pure water is essential to health. Typhoid fever especially is a water-borne disease; there are plenty of cases on record where a single case at the head of a stream has caused dozens of deaths in a city two or three hundred miles farther down-stream. Even where specific disease-germs are absent, no one can be healthy who is

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forced to drink daily water that is really little better than dilute sewage (see also page 309).

Dirt.—Disease comes, too, from dirt. Mud and slime breed disease even in the open air, and feet wet by walking over them may readily cause bronchitis, grippe, and other troubles. Proper street-cleaning will largely remedy this (see page 303). The sputum of consumptives, dried on the pavements, is blown up with the dust, and settles in the throats and nostrils of others. Hence spitting on the sidewalks is forbidden in many cities.

Garbage is ordinarily a source of discomfort rather than disease, but in warm weather is often very discomforting indeed. If allowed to be dumped (as it has been in many cities) in the suburbs, it may be covered over with earth and finally built upon, causing the ill health of people who live over it a dozen years later. All garbage should be burned, used as fertilizer, or otherwise used or destroyed. As a rule, the city government undertakes to remove garbage.

Food.—Few persons are able to judge the food they buy. Germs of typhoid fever from a farm a hundred miles away may travel straight to our doors in a milk-bottle. Pork infested with trichinæ, and beef taken from animals dying of anthrax or tuberculosis, may be bought at the best butcher's in town. Canned goods preserved with chemicals that will ruin our digestions were sold everywhere not so long ago. Our only safeguard lies in a vigilant inspection by expert chemists and trained inspectors.

TOPICS

What local health officers have you, and what are their powers?

What provision is there for street-cleaning and removal of garbage?

What regulations about milk?

What pure-food laws? What inspection of food?

Are these all under local control, or are some of them state or national regulations?

CHAPTER LI

BUILDING CONSTRUCTION

Regulation.—In the country a man may build as he pleases. He has little temptation to build dark, cramped, unsanitary houses, and if he does he himself will usually be the chief sufferer; for most countrymen who build do so to make homes for themselves. Cases of obviously improper construction are so rare in the country that few governments have found it necessary to make laws concerning them.

Far otherwise is it in the city. There no man can live entirely to himself. Space is scarce and valuable, and comparatively few people expect to live in the houses they build. A house improperly constructed may easily be a pest-house or a fire-trap, endangering the lives or property of all who live near it; it may constitute a nuisance, discomforting them; it may cut off their air and light; it may be an eyesore either in itself or in the way it is placed; and from any or all these causes may injure the value of all the other property in the block. For this reason the city asserts the right to exercise more or less supervision over all new buildings. Further, since alterations or repairs may also have hurtful effects, though perhaps in a lesser degree, and as they can scarcely be made without some annoyance to the neighbors, the city also insists on extending its supervision over them.

When any one wishes to build he must get a "permit" from the city government. Some cities charge only enough for these permits to cover their bare cost, others derive

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a good revenue from them. In either case a description of the sort of work to be undertaken must be submitted; in the case of small repairs this may often be done verbally; in that of elaborate constructions, plans must be submitted and studied by the "building commissioner" (he is called by other names in other cities) before the permit is granted. When the work is begun, building "inspectors" visit the scene of operations from time to time, to see that the building requirements of the city are followed and the terms of the permit are not exceeded.

Houses are built to be occupied. Consequently, they must be so built that they will not fall down, so that the danger from fire will be reduced as far as possible, and so that they will be healthful. Further, they should look as well as possible. There are other requirements, but these are the most important.

Each city has its own building regulations, the provisions being drawn to meet the particular conditions of the city. The requirements discussed below are those common to most well-built cities.

Safe Construction.—The safety of a house from collapse depends on its foundation, walls, and floors.

Foundations must be suited to the character of the soil in which they rest. This may be soft and marshy, or it may consist of quicksand, or it may be "made" ground. In any case it must be made safe against settling unevenly under the weight of the building. A settlement of an inch or two on one side of a ten-story office building might have serious consequences. Some soils will not support heavy buildings, and some (as on the edge of steep banks) are not safe for any buildings at all. Building regulations specify the load that each sort of soil will support.

The foundations must also be suited to the character of the building they are to bear. Its height, the number of stories, the purposes for which it is intended (on this depends the probable weight its floors will have to carry), the material of which it is to be built (brick, stone, iron)

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—all determine the thickness and depth of the foundations. Most building regulations are very minute on this subject.

Walls, like foundations, depend on the character of the building, and are also carefully regulated. Generally the thinnest walls allowed are one brick thick.

The height of buildings is usually limited, New York being about the only large city that imposes no restrictions. Boston limits the height of its buildings to two and one-half times the width of the street on which they face, with a maximum height of one hundred and twenty-five feet. Washington, D. C., sets the limit at the width of the street; Washington streets, however, are usually wide. One reason for limiting heights is the difficulty of getting water above a certain altitude, making the extinction of fires in very high buildings a difficult matter.

Deterioration appears in buildings, as in everything else. Structures once safe may readily become unsafe through age or change in use. In such case they may be condemned, and orders issued to the owner to tear them down.

Fire Protection.—Fire is guarded against by the materials and methods of construction, and its consequences are lessened by the adoption of various appliances.

The material of the structure depends on its position with regard to the "fire limits." Practically all American cities (the practice is not followed in England) require that buildings in the more thickly settled parts must be constructed with special reference to the prevention of fire, and the sections where such requirements apply are said to be within the fire limits. In some cities only buildings absolutely fire-proof are permitted within these limits; in others the requirements are less exacting. Outside the fire limits much more freedom is allowed, frame buildings being usually permitted, though even these are commonly required to adopt various constructional devices that have been found to check the spread of flames. The fire limits are extended from time to time as the city grows; if these extensions bring frame buildings, for instance, inside the

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limits, these are not required to be removed or altered. If they *are* removed, however, any new building put in their place must conform to the new regulations. Buildings erected one hundred feet or more from all others are commonly excepted from the stricter requirements, even if they are within the fire limits. In European cities no wooden buildings are allowed, and to this is ascribed the far lower annual loss from fire. The fire loss in the United States is about six times as great as that in Europe.

Safety appliances are commonly required only in semi-public and public buildings. They consist of fire-escapes, broad stairways built separately from elevator shafts, asbestos curtains (in theatres), doorways that open outward, and so on.

Healthfulness.—To secure healthfulness in buildings, city supervision must begin with the site. Cities are seldom deliberately founded on chosen sites; mostly, like Topsy, they “just grow,” and have more or less uneven ground within their limits. In some cities this is built on just as it is, but oftener, especially as the city grows, it is levelled more or less. When there are hills that can be scraped over into the gulleys, the matter is merely one of hauling; but where there are no hills or no gullies, the problem becomes serious. In Chicago and in other places it was for years solved by allowing “rubbish” to be shot into gullies. This rubbish often contained all sorts of decaying matter. It made both an insecure and a very unhealthful foundation. Most cities now forbid the filling in of building sites with anything but good clean earth.

Even on natural ground the problem is not simple, for builders, if allowed, will often run up houses without properly draining the soil, which may easily cause the dwellings to be continually damp. Purchasers are often careless, and renters frequently have little choice. It is the duty of the city to insist on proper preliminary precautions.

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Proper construction comes next. With land as valuable as it is in cities the temptation is great to economize on air-space. Buildings are often run up with dark rooms and passages where the air is stagnant. Such construction costs thousands of lives annually. The germs of consumption, pneumonia, and other diseases thrive in such places and die in the sunlight. Yet people will crowd into such dwellings if they exist. The only remedy is to prevent their construction. The air-supply in a dwelling should be abundant and freely renewable. All cities have building regulations dealing with this point.

Few people have knowledge enough to judge the character of the plumbing in their houses, and yet few things are more important. Leaking pipes and choked drains are murderous; illuminating gas is poisonous; and leaking fixtures are annually responsible for much ruined health and not a few deaths. Plumbing must be strictly supervised, and dishonest or ignorant workmen weeded out.

Even dwellings that were well constructed in the first place often become very unsanitary either from age or from a change in their character. A residence up-town built to house a single family may, in the course of twenty years, become a warren for half a dozen slum-dwellers. Unless the landlord is unusually conscientious, it will not be remodelled to suit its new occupants, and indeed seldom can be. The city has the right to "condemn" such buildings and order them to be torn down. (See also pages 293-294.)

TOPICS

What building regulations are there in your town?
Have you ever known of buildings that have fallen
in consequence of poor construction?

Give as many arguments as possible against high
buildings.

BUILDING CONSTRUCTION

Can you find descriptions of some of the worst tenements that were found in the large cities before the public conscience was aroused on the subject, and also descriptions of so-called "model tenements"? Have you buildings of either sort in your locality?

CHAPTER LII

STREETS AND PARKS

Importance.—Good streets are undoubtedly the most important of all city conveniences. In fact, the progress, civilization, and condition of a people can be judged very accurately from its streets. Good ones argue the existence of cleanliness, health, trade, and enterprise on the part of the inhabitants, and poor ones (except in a very new country) usually indicate sloth and decay. The Romans built splendid roads, not only in Rome but also all over the known world, and held their empire together by them. The countries of the Dark Ages built none; that is one reason why they *were* the Dark Ages.

Two or three hundred years ago there were practically no paved streets. Paris had none until a king of France was made deathly sick by the odors stirred up by a passing carriage from one of the fetid pools that filled the roadway. There is no doubt at all that the plagues that ravaged Europe so often in the past arose largely from the vile condition of the city streets. Even a hundred years ago both Washington and New York had in their very centres streets that would not be tolerated to-day.

It goes without saying that “business,” as it is understood to-day, could not be carried on with such streets. Wagons would be racked to pieces; goods and clothes would be ruined, not only by splatterings but by dust; time would be wasted and health ruined by wet feet and germ-laden vapors and dust. Good streets bring trade, and pay from a money point of view as well as from that of comfort.

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Cleaning.—It is not enough to build streets; they must be cleaned. This costs, but it pays. Small places can be content with a spring and a fall cleaning, but up-to-date cities must sweep their streets at least daily. New York sweeps some of her busiest streets by hand seven times a day. Since she has been doing it the death-rate in her tenements has fallen twenty-three per cent. and the disease-rate almost immeasurably. Disease-germs are heavy. Gelatine plates exposed at various heights above the streets caught millions of germs close to the pavement, and only hundreds five or six feet above it; this explains why children suffer so from playing in foul streets, and why sweeping reduces disease.

In Europe the laws against throwing things in the street are strict, and are strictly enforced. In America they are neither. Hence in America the cost of keeping the streets clean is far heavier than it is in Europe (heavier than it should be in proportion to the difference in wages). When we throw a piece of paper in the street few of us realize that we have got to help pay the wages of a man who must pick it up—a man who might not have to be employed if we, and a hundred like us, would put our trash in the proper place.

Nowadays street-sweepers in America are generally required to wear white clothes and to keep them clean. This is very modern, however, having been originated by Colonel George Waring in New York in 1895. Snow must be removed like any other obstruction; it costs about one hundred and twenty-five dollars a mile for every inch of snow that is carted away from Eastern cities (one thousand dollars a mile for an eight-inch fall), but the loss from letting it stay until it melted would amount to many times a thousand dollars.

Construction.—Streets may be made of several materials, but with all a firm foundation is necessary. Above this may be laid broken stone, wood, granite, brick, or asphalt. Wood is little used except in the West; broken stone

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(macadam) is used chiefly in the country or in the suburbs; brick has almost vanished. Granite, either in cobbles or in blocks, and asphalt are advisable, according to the uses to which the streets are devoted. The material of the streets has a great influence on the cost of keeping them clean.

Ownership.—Cities *own* their streets. In some cases the land is donated by property-owners, who want a street built through their property. In other cases the city “condemns” the land, and pays for it at the valuation fixed by a jury. Some cities pay the cost of opening new streets out of general funds; others require the adjacent lot-owners to pay the whole or a part of the cost; still others assess “benefits” and “damages” (a man’s lot may be cut in two and ruined) arising from the opening of the street, and charge and pay accordingly.

Beauty.—City buildings are not necessarily ugly and city blocks are not necessarily eyesores. Quite the contrary. Beauty is a good thing to have; it pays, even if only by attracting new residents.

No city has yet established a censor for house æsthetics, and none is likely to do so soon. Still, many cities have taken at least one step toward improving the looks of buildings by requiring that all shall range themselves along specified building-lines.

Business buildings are, of course, generally built up to the pavement-line, but residences are commonly set a certain distance back from it, so as to leave room for grass, etc. Private agreements have occasionally resulted in leaving the same space in front of each house, but experience has shown that there are likely to be one or two persons to each block who will insist on building their houses out of line, spoiling the vista, and perhaps cutting off light and air from their neighbors. The only way to prevent the recurrence of this is to establish a building-line, and forbid any one to build beyond it. This has been very

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generally done of late years, and the practice bids fair to become universal.

Most American cities have grown up haphazard with no regard to beauty and with comparatively little even to utility. Streets have been laid off according to the whims of individual landowners, and sites for public buildings too often chosen in the hope of "booming" land values in the vicinity, without regard to the appearance of the city or even to the convenience of the residents. Whatever excuse there may have been for this sort of thing in the past there is none now. American cities are still growing, and, although former mistakes cannot easily be repaired, their recurrence can be avoided.

This is not to advocate interference with the tastes of individual builders; this may come later, but the country is not ready for it yet. It is merely to urge that hereafter new streets and avenues shall be laid off and public buildings located in pursuance of a definite plan. A good plan is much more important than good execution of the several parts, for it is easy to improve the parts later, and very difficult to change the general plan of a city. And any plan is better than none at all.

The plan may be carried to any extent desired, but should at least provide for diagonal avenues to break up the monotony of checker-board squares and for centres (where the avenues converge) for parks, open squares, public buildings, monuments, etc. Such plans have already been adopted or are being worked out in Chicago, Baltimore, St. Louis, Boston, Cleveland, Indianapolis, and Grand Rapids; and other cities seem about to follow suit.

Parks.—Parks are needed for health purposes. Not only do they provide "breathing" spots and playgrounds, but by their restfulness they help to soothe nerves tired and racked by the stress of city life. This last is a very real benefit, no matter how little its consequence may seem to young brains and bodies.

American cities generally excel those of all other coun-

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tries in park space—some of it bought at enormous prices in recent years. Paris, however, has the finest parks in the world.

TOPICS

Why are we more lax than European countries in regard to many police regulations, as, for instance, about throwing things in the streets? Which system is better for the people and why, and how could that system be made of still greater benefit to the people?

Judging from your streets, how high does your town stand in the scale of civilization? Is there anything that you can do yourself to improve matters?

Is your town well supplied with parks? How many ways can you think of in which they are of use to the people?

What is the function of "municipal art commissions"? Are they public or private bodies? What have they accomplished so far?

CHAPTER LIII

WATERWORKS AND SEWERS

Waterworks. — To modern cities waterworks are indispensable. In ancient times water was brought to cities in aqueducts, along which it flowed by gravity, and was dipped or drawn out by hand; but no such primitive method would supply the enormous amounts of water now demanded. Shallow wells are still used for drinking-water in many cities, but they are so apt to become polluted that their use is greatly circumscribed, and in any event they are usually totally inadequate. The only way in which a great city can be supplied with water in these days is by a system of waterworks.

Small towns often get their water from private corporations, and some large cities follow the same practice; but, as a rule, when a city reaches a certain size it either builds a plant of its own or else buys out the private company and enlarges its system. The popular feeling seems to be that the sufficiency and purity of the water-supply are too important to be trusted to private hands.

Until ten or twenty years ago it was comparatively easy for a city to secure reasonably satisfactory water at moderate cost. Most cities were situated on rivers or lakes, from which they drew abundant supplies. Nowadays, however, when each city turns its sewage back into the river in enormous and increasing quantities, it has become necessary either to find some other source of supply or else to filter and purify the river water.

Accordingly, some cities have bought great tracts of land,

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which they police carefully, keeping them as catchment basins for the streams from which they get their water. Other cities have built huge filtration plants at a cost of several million dollars each. Still others draw their supply from deep or artesian wells.

In choosing a water-supply, quality, source, and distribution must be considered.

The quality of the water is, of course, the most important. This does not mean that the water must simply be wholesome and free from disease germs; it must also, if possible, be free from minerals that, while not unwholesome, will make it injurious for manufacturing or steam-engine purposes.

Domestic Supplies.—Drinking-water is injured by turbidity, color, odor, or sewage contamination.

Turbidity is due to clay or silt carried in suspension in the water. Every one living in towns that get their water from streams and use it unfiltered is familiar with this condition. Turbidity, however, is usually more unpleasant than harmful, and can always be modified if not removed by comparatively simple means. Simple sedimentation basins in which the water is allowed to stand until the mud settles will remove much of it, and filters, either chemical or mechanical, will remove much more. Chemical filters are those in which something (alum, for instance) is added to the water to coagulate the mud and make it settle to the bottom. Mechanical filters are those in which the water is passed through beds, usually of sand, before passing into the pipes.

Color is seldom harmful so far as drinking is concerned, though it may make the water useless for manufacturing (see page 309).

Odor may or may not indicate that the water is bad. If it comes, as it often does, from minute vegetable life (*algæ*), it may be very unpleasant indeed without being very harmful. In such cases it can often be removed by adding small amounts of copper sulphate to the reservoir.

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This kills the *algæ* without harming the drinkers. If, however, the odor comes from sewage pollution or from industrial wastes fed into the rivers, it may be very dangerous.

Sewage and industrial discharges are drained into streams from every city, and allowed to flow down-stream to contaminate the supply of cities farther down the river. These discharges will purify themselves in time; but, with the settling up of the country, time is not afforded. On dozens of streams water is taken for drinking twenty, or even ten, miles below the sewage outfall of a large city. Such use is very dangerous.

Steam.—For steam-making water is objectionable when it holds in solution minerals (sulphides of lime, magnesium, and the like) that cause it to form “scale” or to “foam” in boilers. Many waters contain so much of these substances that they would ruin the boilers if used in their natural state, and they have to be treated with chemicals before they can be used at all. This, of course, adds to the expense of making steam, and makes them less desirable.

People who use steam avoid places where such waters are the only ones obtainable.

Industry.—For manufacturing water is injured by containing iron, or alkali, or by being “colored.” Iron stains many fabrics and ruins many dyes, making highly objectionable the use of water that contains it. Alkalies make water hard, and any one that has tried to wash in hard water realizes how difficult it is to make the soap “sud.” This may seem a small thing, but it is not. Soap is a very expensive softening agent; the Geological Survey estimates that a laundry using ten thousand gallons of water a day with a “hardness” of ninety-six parts per million (by no means an excessive hardness) spends three thousand dollars a year that would be saved by the use of a softer water.

Color in the water of manufacture often ruins the prod-

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uct. Some waters contain a green tint from grasses, and all housewives know how hard it is to get rid of grass stains. Others, particularly in the south Mississippi Valley, are black from flowing through swamps. All this affects their value for commercial uses.

Sources of Water.—All water comes originally from rain. Part of it reaches rivers from which it may be taken in the ordinary way. Part of it sinks into the ground, usually going down until it reaches a bed of clay or other substance through which it cannot pass. Then it flows along on top of this clay, percolating through sand, sandstone, limestone, and the like, or seeping through cracks in granitic rocks, until it reaches the surface again in springs, which may be in the open country, in the bottoms of rivers, or at the bottom of the sea. Some water sinks into the ground very deeply and is lost, but there is very little of this; the basic rocks of the globe are usually too dense to permit it to pass below a certain depth.

If a well is sunk to the level where the water is seeping along water will collect in it. If the place where the water soaked into the ground is high, and if the water has not been able to leak out naturally between that place and the well, it will rise in the well. Sometimes it will rise so much that it overflows. Such wells are called artesian wells, and often yield enormous supplies. They are really artificial springs.

Water obtained from deep wells is less likely than stream water to be polluted by sewage, but is more likely to contain harmful minerals dissolved from the rocks through which it has seeped. Water from shallow wells, however, may easily be contaminated by drainage from near-by cesspools and stables, or by things that have fallen into it. Wells in cities are nearly always sooner or later polluted.

Distribution of Water.—In city waterworks the water is finally run or pumped into a reservoir or "stand pipe,"

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whence it flows into the water-mains by gravity. The height of these reservoirs determines the height to which the water will rise in the houses.

A fair average supply for a large manufacturing city is about eighty gallons a day for each of the total population. European cities seldom use half this amount, but American cities often use two or three times as much. The use of meters, and the requirement that each householder pay for what he uses, always work an amazing reduction in the consumption.

Sewers.—Closely connected with waterworks are sewers. Less than a century ago there were no real sewerage systems in existence. Even to-day there are none in St. Petersburg, Moscow, Baltimore, and some other big cities.

In these and in all cities in olden times sewage was run into gutters or into cesspools at the back of the premises and carted away at intervals. Formerly garbage, trash, etc., was commonly thrown into the street; now it is carted away.

The earliest sewerage systems debouched upon fields, which they fertilized and irrigated. Nowadays they usually empty into water-courses, lakes, or the sea.

Sewers serve two purposes: they carry off sewage, and they carry off storm-waters. In some cities this last is done by an independent system. In New Orleans, which lies beneath the level of the Mississippi River, water is collected by sewers and *pumped* out.

Danger from sewage can be reduced either by treating it before it is drained into the river or by treating the water before it is again used. Obviously it is cheaper and easier to treat it before it is poured in, but also obviously such treatment works to the advantage of the users below and not directly to that of those who are paying for the treatment. Human selfishness makes people slow to spend money for the benefit of their neighbors, and it will require much law to compel them to dispose of their wastes so as not to work evil to others. However, the principle

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of the thing has been well established, and many states already have stringent laws on the subject, forbidding the pollution of water-courses. Industrial wastes—discharges from slaughter-houses, dye-works, tanneries, pulp-mills, etc.—fall under the same category with ordinary sewage.

Sewage may be treated in several ways. It may be “disinfected” by being held in sedimentation basins or “septic tanks” until it has *finished* putrefying; or it may be passed through filters that “disinfect” it, so that it will not putrefy or become offensive *at all*; or, best—and most expensive—of all, it may be “purified” by the addition of chloride of lime or some other chemical that will destroy all the disease germs in it.

Just what is required of a city in this respect is not yet settled, but the tendency seems to be to require at least the purification of all sewage that may contaminate either drinking-supply or oyster-beds.

The commonest sign of sewage contamination is the finding (by chemical analysis) of common salt in the water. Salt is abundant in all sewage, and its presence in large amount should be considered a red flag of danger.

It is not positive proof, however, for many pure waters contain much salt. Along the Atlantic Coast, for instance, spray has been blown in from the sea and dropped for thousands of years, and streams naturally pick it up and all grow saltier as they approach the sea. So well established is this fact that “isoclors,” or lines of “equal chlorine” (chlorine being a component of sodium chloride, or common salt), have been drawn on the map of the New England States, and an expert can tell from them what per cent. should be expected to occur in the water at any particular point.

Most cities levy special assessments on the lots along a street to cover the cost of laying sewers and water-mains along it, and for the cost of connecting them to the houses when these are built.

WATERWORKS AND SEWERS

TOPICS

What can you tell about the water-supply of your own town? Is it provided by private corporations or by the city? Is it abundant? Does it come from wells, small streams, or a large river? What do you know about the means taken to insure freedom from disease germs? What do you know about its reservoirs, pumping system, etc.? Is the water hard or soft? Is it considered good for manufacturing purposes?

Is the reduction in the consumption of water occasioned by the use of meters an unmixed blessing to the city?

CHAPTER LIV

PUBLIC SCHOOLS

A HUNDRED years ago education was looked upon as a local affair, with which the state had nothing to do; none of the early state constitutions even mentioned it. Nowadays every constitution mentions it, and in practically every state in the Union it is considered to be a matter of state concern, and year by year the state is asserting more and more control over it; in some states it has taken full control. There is a national bureau of education, but its duties are mostly confined to collecting statistics and circulating information in regard to educational methods. The change has not come about abruptly, but has arisen smoothly and naturally.

Evolution.—The first schools were the old “district” schools—small schools that served small districts; this system continues, and forms the basis of most school systems. Next came township schools, supported by township authorities; the townships, being larger than the districts, could equalize the schools and provide one or more of higher grade. The third step was to the county or city school system, which was about equivalent to the township system, except that the county was the larger. In the South, where the township system never took root, the second step was to the county or city. The next step is likely to be to full state control.

In all these steps the moving force was the necessity of state aid to local schools. American public schools, being free, have to be maintained by taxation. Some country

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districts were not rich enough, and some were not willing enough, to tax themselves properly; so the state (to which the education of its people is of the highest possible importance) had to help out by imposing school taxes on the whole people and distributing the proceeds among the various sections. This tax, of course, discriminated in favor of the country as against the city, and of the poor as against the well-to-do. New York cities, for instance, in 1905 paid about half a million dollars a year for the benefit of the rural districts.

This money aid was the first step. If the state footed the bill, it had the right to lay down conditions (1) as to the length of the school term, (2) as to the qualifications of the teachers, and (3) as to the course of study.

Next the need arose for advanced schools, which no country district could possibly supply. For a time the cities supplied these, only to find that they were conducting them for the benefit, not only of their own children, but for those of their country neighbors also. So the state took charge of the high schools in some parts of the country and helped with them in other parts. Later state universities followed in much the same way.

Control.—In some states city schools are conducted under the same conditions as county schools; in other states they are carried on under charters granted to the cities by the legislature, sometimes under a general law, but more commonly under special laws suited to their particular needs. Usually they are administered by a board of education, which is ordinarily elected, but is occasionally appointed by the Mayor or even by the Governor.

Cost.—The amount of money spent annually by the states for education is large, amounting to over two hundred and fifty million dollars. Of this, ten or twelve million dollars come from permanent sources; the rest is raised by taxation. Permanent sources have come about in various ways. In 1836, for instance, Congress dis-

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tributed ninety million dollars of surplus funds among the states, and most of this was set aside for school funds. Again, Congress has granted for educational purposes from one to three sections in each township to all states in which there were public lands; in some states these have been sold and the money invested; in others they have been retained and are rented or utilized.

Objects.—Free education is not a charity; it is at once an investment and a protection. The government invests money in educating its children so that some day they may be able to earn more and to be more profitable members of the community, and may thereby add to its wealth and power. The government also pays for education just as an individual pays for insurance; by just so much as it is able to turn potential unskilled laborers into skilled wage-earners by that much it relieves itself of the burden of caring for them by charity in later years. And considered in a large way, it is the influence of the public schools more than any other one force that has amalgamated the enormous influx of foreigners to the United States into the American nation. We educate them, not for their sake, but for ours.

The line must, however, be drawn somewhere. Although few people to-day look upon free education as a charity, yet in early times they very generally did so over a large part of the country. To-day we have swung to the other extreme and demand that the government supply not only free education, but also free school-books (which seems reasonable), free breakfasts and luncheons, free spectacles (for near-sighted children), free playgrounds, and so forth. Good arguments can be advanced for all of these, just as good arguments can be made for all forms of charity. Beyond doubt they help the children in a material way. There is, however, grave doubt whether they do not at the same time weaken the moral fibre of the parents and lead them more and more to rely on the government to supply their children's needs rather than to

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rely on their own endeavors. And, of course, the question remains, Where is the thing to end? Will it next be proposed to supply school-children with free clothes and then with free lodging?

System.—A public-school system should meet several requirements: (1) it should be free; (2) it should extend over all grades of education; (3) it should form a sort of ladder which a pupil can go straight up, without loss of time due to shifts; and (4) it should be taken advantage of by all classes of the community.

The American public schools meet all these requirements as those of no other country do. English and European schools are not free (except to paupers); for there are always fees to be paid—in some countries rather heavy ones. Few foreign countries have a continuous educational “ladder”; for, as a rule, “primary” education carries a pupil along to about fifteen years of age, while “secondary” education begins at about eleven, and the subjects so overlap that it is very difficult to change from one to the other without losing three or four years’ time. In fact, few pupils try to do it; the poorer classes stop when they get to the end of the “primary,” and the wealthier classes begin (after private education) with the “secondary.”

The question as to what the schools shall teach is a perennial one. Abroad this is settled by the general government for the whole country; every section has the same sort of schools, no matter what its peculiar needs may be; children are taught the same things whether they live in a farming, or a manufacturing, or a seafaring community; there is no room for elasticity. In the United States, on the other hand, each section fixes the school curriculum to suit itself; and if it does not like it, it changes it.

The state usually prescribes that certain things *must* be taught, but it usually does not *limit* the studies that *may* be taught. Broadly speaking, each community has a

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certain amount of money; if it likes to spend it for one sort of education, it may have to go without another sort; the question is one for local decision, with the certainty that any mistake is likely to be speedily corrected.

The earliest school courses were dreary. Children learned to read, but they never read anything of any particular interest; they learned to write and to parse, but they never wrote anything except an occasional "composition"; and everything else went the same way. Later, all sorts of things were added—literature, language courses, painting, physiology—everything. Since then there has been constant change; one class of the community has gotten control and has added studies to the list; then another has gotten control and has subtracted them again. This fixing of the school course by "addition and subtraction" is not perhaps altogether what might be desired, but it seems to work fairly well in the long-run, and by-and-by may be expected to settle down into something that will be both satisfactory and permanent.

Feminization.—The school system has changed in another way: its teaching force has been "feminized," especially in the lower grades. About three-fourths of all the public school-teachers in the United States are women; in cities the proportion rises to nine-tenths. Partly this has come about through the general advance of women into industrial life (see page 223), and partly because a first-class woman teacher is much more efficient than a second-class man; for a first-class man will seldom continue to teach in the primary schools at prevailing wages when he can almost always earn more in some other line of work. Whether women teachers are the best for children (particularly for boys) is a question; they have not yet been tried for long enough to allow the results to appear unmistakably. If the future shows that they are not the best, the system will have to be changed.

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TOPICS

Was education neglected in the country a hundred years ago?

What practical difference does it make to the cities whether they supply high schools to which their country neighbors send their children, or whether their state taxes are increased to help provide country high schools? Which is better for the state as a whole?

If free schools are provided, should free clothing and lunches be given to the children, so that all may be put on an equality?

Tell as accurately as possible about your school system.

Is there a state board of education? Elected or appointed? For how long? How large is it? Is there a state superintendent? What local school board have you?

CHAPTER LV

CHARITIES

Control.—Public charities are usually in the hands of the county authorities, even when nearly all the population and wealth of the county are concentrated within the limits of a city. Despite this method, which is followed chiefly because it affords the simplest means of equitably dividing the cost of the work, public charity is almost entirely a city affair. The percentage of country residents in the United States who need public charity is very, very small, amounting to scarcely a tithe of the percentage of city dwellers who require it. So, though county authorities usually provide the public relief, they provide it mostly for city dwellers.

Private charity is different. Every city has a multitude of charitable organizations, many of which are carried on in connection with some religious work. Practically every church has its own charity, usually small but sometimes large, and provides as far as it can for its own people. Other organizations, with a wider support, supply summer outings, care for neglected babies, help the blind, provide Christmas dinners, and so on. Hospitals, too, almost universally do more or less charity work.

In most cities, however, the bulk of private charity is in the hands of an "associated charities" organization, which attends to cases too large for the little charities, and which, by its affiliation with similar organizations in other cities, has done a great deal toward checking the swarm of professional beggars who once roamed from city

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to city, and toward solving the question how to do away with the necessity for charity.

All private charities are supposed to be supported by voluntary contributions from private persons. Often, however, they are aided by the city or state government, which will contribute to them just as a private person would. Such offerings, naturally, are always eagerly sought, but it is doubtful whether they are really helpful in the long-run; for when the public knows that a particular charity is getting public aid, it is very apt to imagine that it no longer needs help, and to give what money it can spare to other charities that do not receive such aid.

The public charities of a city fall under three main heads—medical help, poor relief, and transportation.

Medical Help.—Medical help is commonly supplied by physicians to the poor, city nurses, emergency service, hospital clinics and medicines, and hospital care. *Physicians to the poor* are usually doctors in ordinary practice who receive a small monthly salary, in consideration of which each attends to medical cases arising in a certain district. Notice of such cases is telephoned to them by police stations, charity organizations, and, in fact, by any one knowing of them. *City nurses* are trained nurses who work under the physicians to the poor. Under their instructions they visit patients and attend to them as the case seems to demand. In a single day a nurse can make comfortable and hasten the recovery of a score of patients. *Emergency aid* is given in case of accident. An ambulance, carrying a doctor and a nurse, races to the spot. Sometimes some simple aid will enable the victim to go his way; sometimes he can be taken to his home and attended there, if necessary by a physician to the poor; sometimes he must be rushed to the hospital and cared for there. *Hospital clinics* are held daily by many hospitals. Between certain hours any sufferer may call and secure medical advice and free medicine. He will always be asked, however, whether

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he can afford to pay a private doctor, and if he can will be required to go to one.

Hospital attendance is given on about the same terms as clinics and medicine. When sufferers have no one to care for them at home, and are too ill to care for themselves even with the occasional help of a city nurse, they must be taken to a hospital, which may be owned by the city, but is oftener a private hospital which receives from the city a certain sum for each charity patient sent to it.

The tendency nowadays is to encourage all "maternity cases" to go to a hospital. The city finds it cheaper to assure proper treatment to a prospective mother and a fair start in life to a baby than to risk the loss to the community that would result from improper treatment at such a time.

Poor Relief.—Poor relief is of two sorts—indoor and outdoor. *Indoor relief* is furnished in a "poor-house," to which are taken people who are too old or too crippled or too helpless to keep up a home, and who have no one to care for them. Orphan-asylums fall in the same class. *Outdoor relief* is given to people who are defective or disabled in some way, but who, with some assistance, can keep up a home.

The difficulty in all poor relief is that people grow to depend on it and cease to try to help themselves. There seems to be some poison in charity that undermines the moral fibre. Hence the great effort of all charity workers and organizations is to help people to help themselves rather than to help them directly. A "job" is a far better gift than any sum of money could be; and, if no "job" is available, almost any plan that will enable the recipient to think that he is *earning* the assistance that he or she gets is better than a gift.

Strenuous efforts are always made to avoid breaking up a family; the loss of a home, no matter how poor it may have been, has invariably been found to be most injurious. Sometimes two ends can be gained at once, as when an

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orphan child is put to board with a struggling family. In such cases the child's board money may enable the family to keep together.

Another form of poor relief consists of municipal lodging-houses, which are places where a man, wandering perhaps in search of work, can stay for from one to three days if he will do some work (such as sawing wood) in return. This work is given him in order to make the aid appear less like charity, and to keep away those who are merely trying to "sponge" and do not want work at all. Usually municipal lodging-houses give only bed and breakfast, letting hunger for dinner act as an incentive in the search for work.

Transportation.—Transportation is often the best aid that can possibly be given. Americans are great travellers and are continually getting stranded in cities away from their homes and from their "jobs." Usually they have no means of living while they write home for money, even if they have friends to whom to write. Often they will lose their positions unless they get back home promptly. Sometimes they have an offer of a position in another city and cannot get the money to go to the place. Sometimes they have gotten into their straits by their own folly, but more frequently they are the victims of circumstances—not infrequently of pickpockets. Sometimes they are insane wanderers from home.

With all such cases the city has to deal; and, as a mere matter of saving money, it prefers to send all such to their homes. The railways usually grant half-fare rates, and the cost to the city is seldom as great as it would be if even a few of the cases had to remain in the city and become public burdens.

It is necessary, however, to discriminate; and most cities now refuse absolutely to furnish transportation to certain classes. They will not aid "tramps" or "beats" to move to another city; they will not aid men to travel in *search* of work; they will not send men to another city unless

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they have homes or promise of work there; and they will not send insane persons to cities where they have no legal residence. The charity organizations all over the country are affiliated with one another, and they have agreed that each city must bear its own burdens instead of trying to shunt them off on its neighbors. Such an agreement was necessary, as there is no law dealing with the "dumping" of paupers, tramps, insane, and other undesirable persons by one state on another; and it is very doubtful whether the United States government has any power to enact any such law. In the absence of an agreement, all a state could do would be to ship the undesirables to another community, which, in turn, could only send them still farther. At one time this very thing was very generally done all over the United States.

Investigation.—Charitable investigation is usually no longer an attempt to separate deserving from undeserving cases. It is an attempt to rescue the person in need from his unfortunate condition and set him on his feet again. Even the most undeserving case may have resulted from uncontrollable circumstances in the far past; and even the most undeserving may be redeemable if all the facts are known.

Strictly speaking, modern public charity is not charity at all; it is an organized attempt to lessen the cost that the community must incur by reason of the injured, the defective, and the unfortunate. These people cannot be allowed to starve without breeding a revolution that would cost ten times as much as public aid can ever cost. The moment we begin to figure on giving any assistance, the matter resolves itself into a question as to the kind of assistance we shall give, and investigation and experience usually show that the best will be the cheapest in the long-run.

For instance, the victim of an accident, if not promptly cared for, may be a cripple all his life, and, instead of being able to do profitable work and help the community, may be a continual expense to it; the same is true of a sick man,

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with the added fact that he may be the cause of infection to others; the same is true of a child born without proper care. Besides, it is generally cheaper to cure a patient than it is to bury him. Home or "outdoor" relief costs less than poor-house relief, makes the recipient far happier, and always carries with it the possibility that some member of the family may some day assume its burdens. It is cheaper to send a man home than it is to pay his expenses while he waits in a strange city, and so with all other public charity.

The Insane.—The care of the insane is almost the only form of public charity that is generally attended to by the *state*; this for the reason that there are seldom enough insane in any one county to warrant the expenditure of the money required to give them proper attention. In a whole state, on the other hand, there are usually enough to warrant the very best care. In the old days, when an insane-asylum was a mere prison, the insane might be kept very cheaply anywhere; to-day, when an insane-asylum is a very highly specialized hospital, the *best* care is the cheapest, for it results in many cures which enable the sufferers to become once again profitable members of the community.

TOPICS

Have you an "associated charities" organization, hospitals, nurses, ambulance service, almshouses, orphan-asylums, lodging-houses, etc.? Are there "settlements"; free kindergartens, maintained by private organizations, classes for the poor, usually foreigners, to make them more efficient wage-earners; clubs, social centres, and other modern methods of uplifting and helping those who might otherwise drift down to helplessness?

Make a classified list of all the agencies you know of for improving the condition of the less-favored members of your community.

What is meant by "outdoor relief"? Is it a good or a bad thing?

CHAPTER LVI

PUBLIC UTILITIES AND MUNICIPAL OWNERSHIP

Needs of a City.—Public utilities are public necessities nowadays. Roads of some sort were always necessary for city life, but “made” streets, pavements, sewers, parks, waterworks, trolleys, gas, etc., have come to be such only in comparatively recent times, just as walls and fortifications in general have ceased to be. Some of the ancients had some of them in more or less imperfect forms, but those who did not seemed to get along fairly well without them.

Nowadays, however, we look upon all such things as necessities, although in some cases we do without them, just as all of us sometimes do without private necessities. We consider them necessary because we have found that they pay; “made” streets and pavements pay by reducing the wear and tear on clothing and on wagons; sewers, parks, hospitals, etc., by their effect on health; schools and libraries by making the residents more efficient; almshouses by keeping beggars from begging, and so on. We consider them necessary, too, because we have found that to have them makes us more comfortable, and nowadays we look upon comfort as a necessity.

City utilities naturally fall under two great classes: (1) those that the city must ordinarily supply for itself, and (2) those that are more generally supplied to it by “public service” corporations (see pages 333-337). The first class includes streets, pavements, parks, waterworks, sewers, bridges, public schools, fire-extinction service, libraries,

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museums, baths, almshouses, and hospitals. The second class includes trolleys, gas and electric-light service, telephones, telegraphs, and waterworks. Waterworks alone is commonly found in both classes.

Cost.—None of these things come by nature. All have to be supplied and paid for—paid for by ourselves. This fact cannot be too much emphasized. Generally speaking, no government has any money of its own. The money it spends is our money, raised by taxation. When we say that the city ought to spend money for this or that new thing we are really saying that we ought to be taxed to raise the money to enable the city to do it, for all expenditures must come out of *our* pockets.

Pavements, water, sewers, gas, telephones, street-cars, and a dozen other public utilities must be provided in every city, and must be paid for by ourselves.

Those of the first class (except waterworks) are paid for indirectly in the shape of general taxes paid by the people to the city government; and those of the second class are paid for directly—a nickel a ride, a dollar a thousand feet, a nickel or a dime a call, and so on. Water is almost universally paid for directly, either to a city or to a private corporation.

The most obvious question in regard to these utilities is, Why should some of them be provided by corporations instead of all of them being provided by the city? This matter is considered below under the title of "Municipal Ownership."

The next question is just how much we are willing to pay for each of them. Plainly the line must be drawn somewhere, and plainly the exact place must be determined by the particular conditions existing in each city. We must consider, for instance, whether we had better go to great expense to secure a pure water-supply or content ourselves with a poorer one and pay the doctors' bills for healing the sickness that will to some degree follow. Had we better pay more money for more schools or shall we let

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young people grow up with only a limited education? Are street-car lines such a blessing that we will give the companies the use of the streets free if they will only build, or shall we exact a portion of their profits in return for the privilege? Is it better to have one telephone company monopolize the business in the city, or shall we have two to compete for business and keep down rates—and make us rage when we find the man we want to talk to is on “the other line.”

Municipal Ownership.—Public utilities may be and often are owned and operated by the city. Streets and parks, for instance, are invariably city property; and waterworks and fire protection usually are such nowadays, though a few years ago they were not commonly so. The tendency seems to be growing for the city government to own at least those utilities which are natural monopolies—that is, those which from their very nature are likely sooner or later to fall into the hands of a single owner.

Chief among these are waterworks, railroads, gas and electric light, and telephone lines. In Europe all of these are quite commonly owned by cities, but in the United States all of them (except waterworks) are more usually supplied by public service corporations (see page 337).

There are several *causes* and numerous *reasons* why American cities have preferred to allow these things to be supplied by corporations rather than follow the example of European cities.

The *causes* are not far to seek. Probably the most important of them is the fact that nearly all American cities are growing faster than their resources. They are spending all they can raise by taxation for things that they *must* have and that no one but themselves can supply. Even if it were reasonably certain that an investment in street railways, for instance, would pay, few cities have the money to invest. Some cities might borrow it, but the charters of most cities strictly limit the total amount of debt that they may incur, and most of them are already

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uncomfortably near that sum. Further, even if they were entirely free to borrow, most of them would hesitate to go in debt in order to undertake a business that *might* not pay.

Another *cause* is the opposition of those who already supply these utilities. Long before it occurs to most cities that it would be a good idea for them to own these things, they have been supplied by private companies which are earning good incomes on their investments and whose officers are enjoying a very fair measure of power. Naturally the owners are unwilling to sell except on terms to which the city hesitates to agree; and even if the owners were willing, the officers (who wield the influence of the company) would undoubtedly oppose it.

Advisability.—Both *causes* are patent, and, far more than any abstract *reasons*, have made cities slow in adopting “municipal ownership.” There are, however, plenty of real reasons against city ownership, some of them very well founded. And there are also, of course, a good many reasons in favor of it.

(1) The acquisition by the cities of street-car lines, for instance, would very largely increase the roll of city employees. It is argued, on the one hand, that in most cities these new employees would be selected for political reasons and would form a political force whose votes would always sustain the party that appointed them, and deprive the other party of any chance of success. On the other hand, it is maintained that the people would insist that such utilities should be managed honestly without regard to “politics.” It is added that the chance to manage great systems would draw into the city service men who now stand aloof.

(2) A very large part of the corruption that the last few years have disclosed in our large cities is undoubtedly directly traceable to the companies managing public-service enterprises. In many, many cases a public-service company has bought from corrupt councilmen or aldermen

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“franchises” that it ought not to have had on the terms specified, if at all. On the other hand, a corporation has again and again been blackmailed by corrupt city councilmen who have threatened, and not vainly, to ruin it unless it came to terms (see also pages 359). If the city owned the utilities, it is contended that three-fourths of the corruption in city governments would cease. On the other hand, it is asserted that dishonest city officials would continue dishonest, and would soon contrive some way of robbing the coffers of the new city enterprise. Only the form of their dishonesty, it is said, would be changed.

(3) A city's credit is usually better than that of a new corporation, and it can borrow money more cheaply. Further, as it does not need to pay dividends, it should be able to earn greater profits, or to charge lower rates, or to increase the wages or shorten the working-hours of the employees. There are statistics to support this agreement; in a recent year the city-owned gasworks in the United States charged about twelve cents a thousand feet *less* for gas than private gasworks did, and yet earned a profit of nearly thirty cents per thousand on the gas they sold. On the other hand, Philadelphia's city gas-plant was so outrageously mismanaged and robbed that it failed to pay expenses, and was leased to a private company, which is now earning good profits. It must be remembered also that the cost to a city of a municipal plant (railways, gas, or what not) is seldom the mere cost of construction. Almost invariably it includes also the cost of buying up already existing enterprises, usually at stiff prices.

If the enterprise would ordinarily pay a profit to the city, there is dispute as to whether it would be allowed to continue to do so. The temptation to a certain not uncommon type of politician would be strong to increase expenses by creating useless offices and buying construction material at exorbitant prices or by paying unreasonably high wages. Even if the profit should continue, there is dispute as to whether it properly ought to be used to

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reduce taxation (thus inuring to the benefit of all) or should be wiped out by the reduction of rates (thus inuring solely to the benefit of those that used the service).

Trustworthiness.—From the above it appears that the real question is whether our cities can be trusted with the management of their utilities, and not simply whether they would profit by possessing them.

Conditions differ in almost every city, and what would be advisable in one would be most inadvisable in another. Each must work out its own problem. It may be said, however, that it is safe to rely on the American people to wipe out the existing corruption sooner or later. Conditions are no worse in this country to-day than they were in England about 1830; England has purified itself, and the United States will in time do the same; and when it does so the principal reason for objecting to municipal ownership will be removed.

When this reason has been removed the *causes* for inaction will have also largely vanished. Not only will the cities be better prepared financially to undertake the work, but the cost will have lessened. Charters to public-service corporations nowadays almost invariably continue only for a fixed term of years, at the end of which the city may usually acquire their property on reasonable terms. Moreover, when that halcyon time comes, the officers of the corporations will probably favor rather than oppose the transfer to the city, for city ownership will then naturally mean better pay and more permanent positions for them.

TOPICS

Show that many utilities now looked upon as public and free to all were originally private.

How do you classify these in regard to their ownership: streets, sewers, bridges, parks, waterworks, service for fire protection, railroads, gas, electric light, telegraph, telephone, schools, libraries, museums, baths, almshouses, hospitals?

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When municipalities have assumed the ownership of public utilities, has the tendency been to use the profits to reduce rates or to reduce taxation? Give examples.

Find what has been done in the way of municipal ownership in some English and other foreign cities.

CHAPTER LVII

PUBLIC-SERVICE CORPORATIONS

Definition.—Public-service corporations are corporations operating under “charters” or “franchises” which endow them with certain special privileges and require them in return to supply some particular public need or needs, and in so doing to comply with certain special requirements. Commonly they are railroads, trolley lines, gas and electric light, and telephone companies.

The *charter* of a corporation is the act creating it. In the United States this is always granted by the state either directly by special act or indirectly by the provisions of a general law. The *franchises* of a corporation are the special privileges granted it either by the state or by some lesser authority such as a city government. (Franchises granted by a city, of course, apply only within the city limits.) In some states the franchises form part of the charter; in others they are separate from it; in all states they may be added to by either the state or the lesser authority. Such franchises, once granted, constitute a “contract” between the granting power and the corporation, and are subject to practically the same rules of law as any other contract. A state cannot revoke or alter charters or franchises granted by it except according to the terms of the grant. It may, however, declare them void in consequence of the failure of the corporation to observe the conditions of the grant; or may take possession of them, as it may of any other private property, when the public good requires it, on making just compensation therefor.

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Privileges.—Privileges of public-service corporations are of three kinds: (1) they may be given the right to occupy public streets, roads, etc., for business purposes. (2) They may be given authority to exert the state's right of "eminent domain" (see page 108), and thereby compel private owners to sell to them on reasonable terms property needed in their business. (The state, of course, cannot give greater powers than it itself has, and as the state can take private property only for "public use" (see page 109), the public-service corporation cannot do more.) (3) They may be granted the sole right to control some article of public use. For instance, the corporation that exclusively controlled the slaughter-houses of Havana by right of a grant by Spain to Columbus and his heirs was a public-service corporation. Such grants as these, however, are practically unknown in the United States.

Requirements.—Exactions from corporations are various, each state and almost every charter having its own peculiarities. Certain requirements, however, are practically universal, and indeed are held by the courts to be implied even if not specifically stated in the charters. These are:

(1) The corporation must be operated for the use of the whole public and not for a certain class; that is, it must give the same accommodations to every one. (2) It must give this service either at rates fixed in the charter or at "reasonable" rates. (3) It must charge every one equal rates for equal service. (4) It must give service that is reasonably satisfactory in view of the particular circumstances under which it operates. (5) Generally it must pay a special tax in addition to ordinary taxes on the value of its property, this special tax being looked on as a sort of rental for the use of the streets. (6) In several states a greater degree of publicity in regard to their business is required of a public-service corporation than is demanded from other corporations, and a certain control is exercised over their finances.

Minor requirements are numerous. For instance, Oak-

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land, California, granted the use of one of her streets to the Southern Pacific Railway on the condition (among others) that her citizens should be allowed to travel free of charge on all trains within the city limits.

Existence.—It was once customary for legislatures to incorporate companies with perpetual powers, and for cities to grant the use of streets in perpetuity without imposing any conditions worth speaking about. The idea probably was that self-interest would lead the corporations to do "the right thing." It was only later that it turned out that corporations usually did the right thing only so long as it paid them to do it.

A good many of these perpetual charters have been surrendered in return for additional rights which, though not perpetual, were greatly desired for one reason or another; but some still exist and are a source of much trouble.

Nowadays public-service corporations are usually chartered for a fixed term of years, at the end of which time their "plant" in many cases becomes the property of the city. This plan is much like that whereby the owner of a vacant lot leases it for a term of years, on condition that at the end of the term it and all the improvements on it (buildings, etc.) are to become his property.

Modern charters also commonly provide for a special tax on earnings—often a graduated tax, which grows heavier either year by year (as the city grows) or as earnings increase. They also usually expressly limit rates or reserve the power to limit them—a thing that some of the older charters did not touch on at all.

Regulation.—Aside from charters, cities base their claims to regulate public-service corporations on two sets of facts: (1) All public-service corporations must use the streets. Trolley companies must lay tracks in them; telephone companies must string wires across them; gas companies must lay pipes along them. The streets are for the free use of all, and when corporations (or persons) use them for profit-making purposes the city claims the right to regulate

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their operations and see that they act with due regard to the safety of the public. It also claims the right to impose on them a special charge, usually a percentage of the gross receipts, as a sort of rental for the use of the streets. (2) Many public-service "franchises" (authorizations to do business) are exclusive; either they are outright specified monopolies or else they are monopolistic in their very nature. When one telephone or gas company gets installed in a city, it is very hard for any other company to secure a foothold, even if it is granted the right to try. When one trolley company has its tracks on the best streets in a town, the mere occupation of them keeps other companies from building lines at all. For this reason the authority which granted the first company the right to occupy the ground asserts the right to compel the company to serve the *convenience* of the public at reasonable rates; for otherwise the company might give inadequate service at extortionate rates, thus defeating the very object for which it was created. Thus most cities fix gas rates, street-car fares, and telephone charges, and many fix the hours and frequency of service, especially those of car lines. All such regulations must, of course, be reasonable; that is, not so burdensome or costly as to prevent the company from earning a fair income on its property, for to do this would amount to taking private property for public use without just compensation—a thing forbidden by the Constitution of the United States.

The power to control public-service corporations differs in the different states. In some the legislature retains the whole power, even to specifying the streets that may be occupied and the character of the service to be supplied. In some cases the city has to confirm such a legislative grant either by its council or by a popular vote; in other cases the city has no say in the matter at all; in still other cases the legislature creates the corporations, but leaves it to cities to fix the terms on which these can use the streets.

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Classes.—Public-service corporations are not confined to cities. Railways, telegraph lines, and express companies are public-service corporations, as are all other corporations known to the law as “common carriers.” The position of pipe lines for the transmission of oil, and of private car lines, is doubtful; on the one hand, they occupy public property to some extent; and, on the other hand, they chiefly or wholly convey their own property only, and do not do a public business for hire.

Public-service corporations confined to cities are street railroads, gas and electric light, telephone, and waterworks companies. All of these provide public conveniences which neither corporations nor individuals *can* provide without special permission. All these conveniences *could* be provided by the cities themselves, and many of them are. Most cities, for instance, own their own waterworks; a few cities (among them Richmond, Virginia, Wheeling, West Virginia, and Duluth, Minnesota) own their own gas-plants; a great many small cities and a few large ones own their electric-light plants; so far as known only one small city (Grand Junction, Colorado) owns its own street railways.

TOPICS

Consider the public-service corporations of your town in regard to their charters, franchises, privileges, and requirements.

Would it be of advantage to cities to own more of the public utilities? State arguments on both sides. Is there anything in the constitution of your state to prevent any great increase in this public ownership?

If you make franchises difficult to get by putting high prices for them or making them run for a very short time, what effect will it have on people who have money to invest?

PART II.—CITY ORGANIZATION

CHAPTER LVIII

FORMS OF GOVERNMENT

City Corporations.—A municipality is a corporation much like any other corporation (company, in every-day speech). It is incorporated by the legislature of a state, sometimes by a special act, sometimes under the provisions of a general law; it has no capital stock, but it has plenty of stockholders, for each of its adult male citizens may very well be considered to be the owner of a single share; it has a paid-in capital invested in certain property, real and personal; it can sue and be sued; it has a constitution (or charter) limiting its activities; it can tax (or assess) its stockholders for running expenses and pay them dividends (not in money, but in comfort); and it can usually carry on all sorts of side lines if it wants to do so.

Every corporation has two essential parts: (1) a board of directors who consider and act on all important matters affecting the property of the corporation; and (2) an organized body of employees who carry on the business according to the instructions of the directors as transmitted to them by the president or general manager. A city government also has a board of directors (council, board of aldermen, commissioners, etc.), which regulates the affairs of the city; and a body of employees who do the work of the city, usually under the direction of a Mayor. A city government, however, has also a judiciary branch, which is lacking in private corporations.

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All city governments, then, have three branches—legislative, executive, and judicial. It is much simpler, however, to consider these, not under three such heads, but simply as directing officers and subordinate officers.

Directing Officers.—The directing officers, of course, are the Mayor and the council. In most cities the council is by far the more powerful of the two; in a few the executive is; and there are all grades between. Every conceivable plan for distribution of power seems to have been tried, but few have given even reasonable satisfaction. City governments abroad have usually worked well, but those in the United States are generally agreed to be little better than makeshifts.

Explanations for this condition of affairs are abundant and often plausible. Changes are continually urged that, it is claimed, will set matters right. Unfortunately, when the change has been made the resulting form of government is seldom more satisfactory than the original one.

There is no doubt at all that the failure of the better-educated and wealthier classes to give to city politics the time and attention that they should is responsible for much of the trouble, but it cannot be responsible for all of it. Dwellers in European cities are not so much more watchful than we are as to explain the admitted superiority of their city governments. The trouble must be due in part at least to some broad defect in our plan.

This defect, however, is difficult to find. One would think that in the multitude of experiments at least, one city would have avoided it, if only by chance. Until quite recently, however, none did, and it is by no means certain that any has done so even yet.

Subordinate Officers.—Every large city has, of course, many subordinate officials. The higher of these gain office in several ways. In some cities several of them are *elected*, usually on the same ticket with the Mayor; in other cities they are appointed by the Mayor; in a few they must be *confirmed* by the council, just as the President's appoint-

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ments must be confirmed by the United States Senate. The tendency of late years has been to place all appointments in the hands of the Mayor, and to hold him responsible for making good selections. In Boston the Mayor makes all appointments, but they must be confirmed by the state civil-service commission, which is appointed by the Governor. Generally, subordinate officials are appointed either by the heads of their divisions or by the Mayor. Judges are almost invariably *elected*.

Types of City Government.—All American city governments fall into one of two broad classes: (1) those governed by a Mayor and a council; and (2) those governed by a president and a commission. Nearly all the cities in the United States are governed under the first plan, only a few having yet adopted the second.

Government by Mayor and council is modelled on the United States and state governments. The division of power between three independent branches—executive, legislative, and judicial—has worked so well in national affairs and even in state affairs, that we have taken it for granted that it will work equally well in city affairs. For more than one hundred years we have been trying to make our city governments more and more like our national government—and we are not proud of the result.

As a matter of fact, there is no very evident reason why they should be built on the same plan; and there is plenty of historical evidence that the makers of the United States Constitution contemplated nothing of the sort.

Under this federal plan cities are divided into “wards,” each of which elects a representative to a city council. Some cities have a “bicameral” council, consisting perhaps of “Aldermen” and “Councilmen” (imitating United States Senators and Representatives), the Aldermen being elected from larger districts than the Councilmen. Whether the council consists of one chamber or two, it exercises the legislative power of the city.

The executive power is placed in the hands of a Mayor,

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elected by all the voters of the city. In some cities this Mayor is given the right to veto legislation, but oftener he is not. He never has anything else to do with making the laws of the city. His duties are exclusively administrative—to execute the laws.

Mayors and other high city officers are generally nominated by the ordinary political parties. In Boston, however, this plan has been abolished, and now any man can run for city office who can get the indorsement of five thousand voters.

Government by president and commission was first tried in Washington, but, as conditions are peculiar in that city, its great success there for a long time did not cause it to be adopted anywhere else. But in 1900, after the great calamity that wrecked Galveston, Texas, the people of that city decided that they could never redeem the place under the old corrupt and inefficient city government, which in less than twenty prosperous years had plunged them three million dollars in debt.

So they struck out an entirely new plan. "Wards" were abolished, and the government was placed in the hands of a commission of five men who were chosen from the whole city—not one each from five districts, but all five from the whole city. The commissioners elect one of their number to preside, but he has no special power. Each of the other commissioners is assigned to manage one of the four great departments into which the city affairs are divided—finance and revenue, waterworks and sewerage, police and fire protection, and streets and public property. The president has no special department, but acts as a tie between all.

Each commissioner is held responsible for the workings of his department, but all city ordinances are adopted by a majority vote. All city officers are appointed by the commissioners.

Other Texas cities have adopted this plan. The State of Iowa has made it optional for cities of twenty-five thou-

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sand people and Des Moines has adopted a charter under it. Kansas followed suit in 1907, and by the close of 1909 Kansas City, Kan., and six other cities had adopted the plan. Other states and cities will probably soon follow.

The results have so far been admirable, but ten years is too short a time to tell whether the municipal question has been solved. Only time will show whether success so far has resulted from the excellence of the plan or from the excellence of the men who chanced to be at its head.

TOPICS

Is your town governed by a Mayor and council? Is the council "bicameral"? (Find derivation and meaning of this word.)

What do you call your council? If there are two chambers, what is the name of each? How many members are there? Who are the representatives from your ward or district? How long do they hold office?

If your town is governed by a commission, find out what you can about it, date of appointment, number of commissioners, duties, etc.

Is there any reason why a plan like this might work better for a few years than the old way with a Mayor and council?

Is there any reason why it should continue to be more satisfactory?

What are the advantages of placing appointments in the hands of the Mayor?

CHAPTER LIX

COURTS

EVERY state has a court of last resort, generally though not universally called the "Supreme Court." Commonly this court has "appellate" jurisdiction only; that is, cases are not heard in it originally, but come to it on appeal from lower courts.

These lower courts are either county or city courts, which have jurisdiction only over the cases arising in the particular county or city in which they are located. In some states *county* courts have control of all except very minor cases; every city is, of course, located in some county, and cases arising in it go to the county courts. More commonly, however, large cities have their own courts, which take the place of those of the county and have about the same powers. In some states there are both city and county courts having nearly equal jurisdiction over nearly the same area; the cities have grown so fast that there has not been time to change the system adopted when they were smaller. Broadly, what is said below in regard to city courts may be understood, with obvious modifications, to apply to county courts.

Justices' Courts. — At the basis of the system is the court held by magistrates or justices of the peace, and variously known as city court, municipal court, magistrate's court, justice's court, and so on. In their details such courts differ in every state, almost in every city, but in their broad outlines they are nearly identical.

In counties and in the smaller towns the justices of the

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peace have both civil and criminal "jurisdiction"; that is, they deal both with minor violations *of* the law and with disputes arising *under* the law if these do not involve more than a certain small sum—one hundred dollars in many states.

In cities these functions are usually divided up, one class of justices dealing with minor civil cases and another class with petty crimes and misdemeanors. Generally, though by no means universally, only those justices who deal with civil matters are known as justices of the peace or as judges of "city" courts; while those who deal with violations of the law are known as police magistrates.

The justices entertain suits for sums of money less than the limit fixed by the state or for the recovery of property of less value than the limit. Commonly, also, they may enforce a mechanic's lien for labor or materials used in building; may foreclose chattel mortgages, etc.

The special duty of the police magistrates or police court is to enforce the *regulations* of the city. For the infractions of these they may impose fines, send prisoners to the workhouse, put them on probation (see page 245), admit them to bail, or send them to jail to await the action of the grand jury. For some offences and in some states prisoners can demand a jury trial instead of submitting to the decision of the magistrate, but this is rarely done. The magistrate will probably be as merciful as the jury is likely to be, and in minor cases a sentence would be served and over with in less time than the prisoner would have to stay in jail waiting for a jury trial to begin.

Juvenile Courts.—Children's courts are very modern. Until almost yesterday juvenile offenders were treated exactly like mature ones. A boy who stole an apple from a fruit-stand could be, and quite frequently was, sentenced to the city jail, where he was confined with abandoned criminals. In most large cities "houses of correction" were established for the imprisonment of juvenile offenders, but these were not always much improvement on the

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jail; and in small towns and villages the one jail did for all. However bad a boy or a girl was when he or she went into either, they were worse when they came out—were often diseased and always polluted both as to mind and body.

In June, 1899, Chicago established the first special court for juvenile offenders, and two months later Judge Lindsay, of Denver, stretched the Colorado law so as to establish the second. Since then such courts have been established in a majority of the large cities of the United States.

The juvenile court is very unlike an ordinary court. The judge, indeed, has at his disposal all the weapons of the law, but he does not use them if he can avoid it. He sits, not as a judge, but as a father whose object is not to punish but to reform. Mere boyish mischief is passed over with a warning, sometimes with a fine which is remitted if the father of the boy will give him a good sound whipping. For more serious offences the boys are put "on probation."

Probation is very nearly the same thing as the "suspended sentence" which has been known to the law for centuries. Under it an offender who is sentenced to a certain punishment may have his sentence suspended during his good behavior, usually on condition that he report to the authorities once in so often. If he proves unworthy of the mercy shown him, the sentence is revived and carried out without a further trial. In the juvenile court the same thing is done without going through all the forms of suspension; the boys are required to report to the judge at certain intervals, and are also placed under charge of a "probation officer."

The probation officer (usually a woman) continually visits the homes of the boys under her charge and finds out how they are getting along. She finds out, too, whether they are living under proper influences. Some surroundings are so terribly destructive of all honesty and decency

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that it is scarcely possible for children bred under them to grow up into anything but criminals and outcasts. In such cases the juvenile court may order the child to be removed to other care, where he can have a "square deal." This, however, is a last resort. No child is ever removed from his home if it is possible to leave him in it without doing him a grave wrong.

Probate Court.—Another most important court is the "probate court." This has jurisdiction of wills, estates, and so on.

Law and Equity Courts.—Above the minor courts named come tribunals, the number, names, and grades of which depend largely on the fancy of the state law-makers. They are divided into civil and criminal courts, and the civil courts are again divided into courts of law and "equity"—equity being a system by which the strict letter of the law is relaxed when it is evident that it would be unfair and "inequitable" to enforce it. The same court may have criminal, law, and equity jurisdiction, but ordinarily separate courts are established.

The higher courts have control of serious offences (generally of those forbidden by the *laws* of the *state* as distinguished from the *regulations* of the *city*) and of disputes involving large sums of money. Criminal cases may always be appealed for good cause to the highest court in the state. Civil cases may be appealed only as permitted by law; some may be carried to the highest court, while others are considered by the law to be of too little importance to be permitted to take up the time of the higher courts. Any case, civil or criminal, however, in which United States law is involved may be appealed from the highest state courts to the United States courts.

TOPICS

Make a visit to a local police court, the lowest civil court, and the highest criminal and highest civil court in your vicinity, to note differences in

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workings. (You should go accompanied by one of your elders.)

Why are appeals allowed?

What is meant by the "law's delay"?

Why is it that in some states cases are decided very rapidly and in others very slowly?

Is there any connection between lynching and the slowness of the courts?

What is meant by the peremptory challenge of a jurymen?

How is the jury system abused?

CHAPTER LX

POLICE

Special City Restrictions.—Many things may be done in the country without the least objection that cannot be allowed in the city at all, or can be allowed only under special conditions. The collection of many men in a comparatively small area demands restrictions that are not necessary in thinly settled regions. Such restrictions are necessary in order to prevent the few from lessening or even destroying the safety and comfort of the many.

Take, for instance, such an apparently harmless thing as a recent attempt in Washington City to pay a freak election bet by rolling a peanut with a crowbar along six crowded city blocks. Before the victim had rolled it half a block he had a tail of spectators who blocked traffic and caused dangerous crowding, and it was necessary to rush police to the spot to prevent some one from being hurt. Finally he was arrested on a charge of "disorderly conduct." Later the judge inflicted a small fine upon him. His act, innocent in itself, was not permissible under city conditions.

The public safety thus calls for constant supervision, not only to protect city dwellers against the acts of deliberate evil-doers, but also to save them from the carelessness and neglect of either themselves or others. Crowds must be prevented from trampling individuals to death and from forcing them into deadly peril, as they might easily do without in the least intending it. Fighting must be prevented because it is likely to result in harm to innocent bystanders.

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The morals of a city must also be protected. Immoral or indecent "shows" must be prohibited. Gambling, drunkenness, cruelty to animals, etc., must be prevented as far as possible, both for the sake of the victims and for the sake of the community, which will usually also suffer from them. When a man gambles away his wages, the city may have to care for his family; when he gets drunk, the city may have to suffer for his drunken folly; when he beats his horse unmercifully the city is likely to lose the labor of the horse and is certain to have its sense of decency outraged.

Business must also be regulated in cities. Merchants must not be allowed to obstruct the sidewalks. Saloons must be required to conduct their business in such a way as to be as little of a nuisance as possible. Carriages, motors, bicycles, street railways, and the like must not be permitted to run through city streets at dangerous speeds. Traffic moving in opposite directions must be compelled to keep on opposite sides of the street in order to prevent blockades.

Nuisances must not be allowed. A farmer can keep a yardful of chickens without discomfort to any one except himself, but a city resident who keeps even a single rooster will very probably disturb every one who lives near him.

The legislature, of course, has power to make laws in regard to all these things, and it does make laws about a great many of them (see page 207). The trouble is, however, that such laws are general; they apply all over the state, in city and country alike; and, if adapted to the special needs of a city, they are very apt to work injustice when applied in the country. It is much better to let cities regulate all minor matters for themselves, and this course is very generally followed.

Rules adopted by a city for the preservation of public order are generally spoken of as "police regulations."

Police.—The enforcement of police regulations rests with the police. Police are not officers of the courts; they are re-

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sponsible to the executive and not to the judicial branch of the city government. Nevertheless, they are in a way judges, for they pass first on many offences and continually let offenders go with a warning instead of placing them under arrest. The exercise of judgment is necessary; any other system would quickly prove intolerable; yet it lies at the root of some of the most disgraceful conditions in American cities (see pages 357-358).

All cities have at least two sorts of police—ordinary and secret. The ordinary police wear uniforms and are commonly divided into patrolmen, who watch certain “beats”; roundsmen, who visit the “beats” once in so often and see that the patrolmen are on duty; sergeants, who usually have charge of a substation or precinct; and higher officers, who exercise supervision over the whole. The secret police are known as “detectives,” and are not uniformed.

Most American cities maintain their own police and pay for them out of local taxes. In St. Louis, Baltimore, and Boston, however, the state appoints and controls the police. This is because the politics of these particular cities usually differ from those of the state, and the dominant political party in the state hopes to gain an advantage by controlling the police. Such a policy is, of course, indefensible.

In certain cities, notably New York, there is a division known as harbor police; these are provided with launches, motor-boats, and so on, and wage war against river pirates. The laws, however, are inadequate; it is not enough to catch a pirate with stolen goods on board; it is also essential to prove whence they were stolen—a thing that is usually impossible where shipping is concerned. A scoopful of coffee taken by collusion with a watchman from each of a thousand bags very evidently cannot be traced.

Washington City has a special police known as the Capitol police, whose duty it is to supervise the public buildings and grounds of the city. Many cities have so-called sanitary police, but these are seldom empowered to

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make arrests; their duties are usually merely those of inspection.

Arrests.—All proceedings against offenders in a city begin with an "arrest" by the police. If a policeman has witnessed the offence, or if some one who has witnessed it is willing to make a charge against the offender, the policeman may make the arrest on his own motion. If he has not witnessed it, and if no one will "charge" the offender, the policeman cannot arrest without a "warrant." A warrant is a formal charge sworn to by some one "on information and belief." The person who makes the charge, whether informally or by warrant, may be required to give satisfactory bonds to appear as a witness and sustain his charge when the case comes up.

When an offender is arrested and taken to a "station-house," he may be locked up or may be released on "personal bonds" or on "bail." Personal bonds are merely a promise to appear, and are accepted only in cases where there is no doubt that the person will appear. Bail is of two sorts: (1) an owner of real estate to a certain amount may "go security" in a certain sum for the appearance of the prisoner—that is, may agree to pay over to the court the amount specified if the prisoner does not appear; or (2) the prisoner or his friends may put up "cash" bail—that is, may deposit a certain sum of money which is to be forfeited if he does not appear. For minor offences a cash bail of five dollars or ten dollars is the common form.

If the offender does not appear, his bail is forfeited. This, however, does not legally end the proceedings against him. He may be arrested again and punished according to his offence. As a rule, however, in minor cases when cash bail is forfeited no further action is taken. The amount of the bail is supposed to be just about equivalent to the fine that would be imposed if the offence were proved.

Police methods in the United States were inherited from Great Britain. New York, which was the first city to organize a police force, modelled it after that of London.

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The police, however, have greater power in the United States than they have in England; in the United States they continually act in an arbitrary and high-handed manner that would not be tolerated on the other side of the water, but that is probably justified here by the difference in the conditions.

One instance of this will suffice. Whenever any event (the opening of an exposition or a naval display, for instance) is certain to draw a crowd from all over the United States, the police of each of the larger cities sends to the scene an officer who is acquainted with the criminal classes. The duty of these officers is to recognize and warn away any "crooks" who may arrive at the place to prey on the crowd. If any known "crook" persists in remaining, he is arrested as a "suspicious person" and locked up until after the celebration is over. This sort of thing sets at naught all the safeguards established by the law for the protection of citizens against unjust arrest, but it is continually practised, probably chiefly because no "crook" is in a position to protest against it.

TOPICS

How do the members of the police force get their positions, by appointment or election? Do they come under civil-service regulations?

What are reasonable requirements for an efficient policeman?

Tell something about traffic regulations in large cities. Why do we hear so much about this lately?

Would you like to see your community left without any policemen? Give your reasons.

Is "disorderly conduct" an offence against the laws of your state?

CHAPTER LXI

POLITICAL PARTIES AND ELECTIONS

POLITICAL parties and elections in the nation at large have already been discussed at some length (see pages 261-284), and it might be supposed that nothing need be said about them here. Such, however, is not the case.

Theoretically political parties and elections in cities should not differ from what they are in the rural districts and in the country at large. Actually they do differ very widely, and for this very good reason.

Classes of Voters.—A country district is homogeneous. The great body of its residents are of the same class and have about the same interests. They are all more or less acquainted with one another—more or less familiar with one another's ideas. Public opinion is very strong, and few are willing to defy it. The residents all want about the same things for the neighborhood, and differ chiefly as to the means and the practicability of getting them. In such districts party organization is comparatively simple.

Far otherwise is it in the city. There the people invariably fall into classes according to their wealth, education, occupation, etc. There is always a "silk stocking," a business, a laboring, a servant, and a criminal class, and often there are several foreign classes. Each of these classes is largely ignorant of the lives of all the others. A merchant may for years see the same man clearing the street in front of his house and never really notice him.

There is no common set of public desires or public

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opinion. Each class has its own desires, which are often opposed to those of the rest. It follows there is seldom any real city spirit. When we read in the papers that "everybody" is going to pull together in some plan for advancing the city, we usually find out that "everybody" means only all the members of a particular class—usually the commercial or business class.

Society is stratified—divided into layers—and these layers may easily become hostile. All history teaches this.

The success of a political party in the city depends on its ability to weld these diverse layers and form from them an organization that will work harmoniously for a common end. A party that permits itself to appear as the representative of one particular class of society is seldom successful and never permanently so, for the moment it identifies itself with one class it inevitably arouses the opposition of all the other classes.

It is, of course, true that certain classes tend to certain parties; saloon-keepers as a whole may incline to one party, and "protected" manufacturers to the other. But this is only a tendency. Very, very many of each class are ardent supporters of a different party from that to which the bulk of their friends belong. This was very plainly shown in the presidential election of 1908, in which the leaders of the labor class utterly failed in a tremendous effort to swing the labor vote to a particular party.

To succeed permanently a party must draw from nearly all classes and antagonize very few. In this respect, if in no other, city and country politics are sharply dissociated.

It may be added parenthetically that this uniting of different classes for a common cause is of supreme importance. Men who have fought side by side under the same banner for some cause cannot help but feel a certain degree of sympathy with one another which weakens the forces that are continually tending to arouse class hatreds. The only two influences in the country (outside of patriot-

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ism, to-day that makes for this union are party "politics" and religion; and of these two the former, if not the stronger, is undoubtedly the most pervasive, reaching to the very lowest depths of the community.

It may seem absurd to put forward the much-abused political parties as preservers of the peace and prosperity of the nation, but that they really are such cannot be successfully disputed.

Identification of Voters.—Another cause of difference between city and country "politics" results from the lack of acquaintance among the voters.

In a rural district every voter is known, if not to all of the others, at least to many of them. No one not entitled to vote is likely to present himself at the polls, and if he does there will always be plenty of credible witnesses competent to witness against him. In a city, however, it is impossible that the judges of election should be informed as to the right to vote of everybody who might present himself. Party "watchers" might "challenge" a man, but the challenge might be utterly unjust.

For this reason most cities have a system of registration requiring all intending voters to register their names and addresses some time before election, thus affording time for their right to vote to be looked into. Registration is not really necessary in the country, but is required there only for the sake of uniformity.

In most states registration must be made on one of three days about a month before election. Failure to register ordinarily loses a man the right to vote. In some states, however, he can "swear in" his vote; that is, make affidavit that he is entitled to vote but was prevented from registering by one of a very few specified causes, which differ in different states.

Registration is a great bulwark against fraudulent voting, and particularly against repeating (one man voting many times at different polling-places), but it does not stop it altogether. There are always a good many men who

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register but do not vote. Party-workers keep track of these, and in the closing hours of the election are apt to send in men who will impersonate the missing voter and cast a vote in his name. Such an act would, of course, be impossible in the country.

Another corrupt device, much practised in cities but impossible in the country, is known as "colonization." In New York, for instance, there are single city blocks that house the population of a small city. A hundred men might be brought from another state in time to register from each of said blocks, and then be brought again to vote. This can only be prevented by a preliminary visit to each and every address given to ascertain whether those registering are really residing there and whether they are really entitled to vote.

TOPICS

What is meant by a "silk-stockings" class?

Describe the machinery of an election as it is in your town.

If you live in a large city, visit a registration-place and see what the men are doing.

Visit the nearest polling-place on Election Day.

CHAPTER LXII

"GRAFT"

"GRAFT," though by no means lacking in state affairs, reaches its maximum in American cities. It is bred from the intimate control that city governments possess over the business and personal affairs of city dwellers. The necessary restrictions of city life are often vexatious and costly, and there are always plenty of men who prefer to buy the right to violate them rather than to accommodate themselves to them.

Police "graft" is the most widely known form of "graft." "Graft," however, is not simply a matter of the police. Like "all Gaul," it is divided into three main divisions: (1) police "graft"; (2) city council "graft"; (3) legislative "graft." The edges of all three, however, overlap.

Police "Graft."—The police necessarily possess great powers. Usually they must act summarily; that is, they cannot appeal to judges or higher officers as to whether or not they shall do this, that, or the other. They must act on their own judgment—of course, at their own peril if they transcend their powers.

If a policeman acts unjustly, he may get into trouble; if he fails to act when he should, he usually runs no risk. Yet one thing is as bad as the other. Undue leniency in enforcing the laws and city regulations encourages further violation of them. The policeman who lets a merchant block the street with boxes is directly akin to him who lets the saloon-keeper sell liquor on Sunday and to him who

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permits nameless things to be done in low dives. The difference is not one of character, but merely one of degree. Undue leniency is generally favoritism, and favoritism is the parent of "graft."

"Graft" probably began innocently enough. The patrolman who accepts a cigar or a handful of fruit to wink at minor violations of the city laws is practising a mild form of it. He who "holds up" a gambler for half his illegal winnings only extends the process. For a long time such practices as these were "individual"; that is, were practised by single policemen, who were usually found out and punished sooner or later. But after a while some one, some high official, some "boss" (see page 269), saw an opportunity and "organized" the business, and was quickly imitated in all large cities. Through the police, toll was exacted from every illegal enterprise in town. Saloons might keep open at unlawful hours if they paid for "protection"; otherwise they would be continually "raided" and their owners continually fined. Gambling-houses might ruin thousands if they paid the "boss." Dives might drag boys and girls down to destruction if they paid the "boss." All of these places were raided and fined once in so often in order to persuade the public that the police were doing their duty, but, so long as they kept up their secret payments they were not disturbed enough to materially lessen the evil that they did nor the profits that they made.

The vice spread. Through other city officials other illegal privileges were sold. Building inspectors permitted buildings to be run up without air-spaces or without the fire-escapes required by law; health inspectors permitted diseased meat to be sold in open market, and so forth.

The paid officials—paid by the city to maintain its laws and protect its citizens—were transformed into agents for the sale of privileges to violate those laws.

City Council "Graft."—Police "graft" is only one form of "graft." Another concerns itself with the sale

“GRAFT”

of privileges—not necessarily illegal privileges. For instance, a merchant wants a switch laid from the railroad track to his warehouse. The railroad is willing but not anxious, and the merchant has to secure the required permission from the city council. The city council refuses to grant a permit. Then some day an agent calls on the merchant and offers to get the required paper for such and such a sum. The proposition may be baldly made or it may be veiled, but in either case it means that certain members of the council are demanding a bribe before they will grant the permit.

Again, a gas-lighting corporation has served the city under a contract for a term of years. The contract runs out and must be renewed. Certain members of the council form a new company, ostensibly to supply gas, and threaten to prevent the renewal to the old company unless they are bought off.

City council “graft” is more insidious than police “graft.” A business man may feel that it is very hard that he should have his business obstructed and delayed simply because he refuses to be blackmailed by a corrupt council. Yet every business man who stands out against the thieves makes it easier for the next man to do the same thing—makes the “graft” less profitable and tends to drive the “grafters” to abandon a business which is, to say the least, a risky one.

Moreover, it should not be forgotten that the bribe-giver in the eyes of the law is as bad as the bribe-taker.

Legislative “Graft.”—Legislative “graft,” although it is practised by members of state legislatures, is usually directed at city dwellers and chiefly at city corporations. It has two forms—the passage of laws for improper reasons, and the extortion of blackmail by means of a threat to pass laws distasteful to wealthy interests.

The bribing of legislators to pass unjust laws or to vote down just laws is still commoner than it should be. In many states, however (as well as in the United States

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Congress itself), it has given place to the less crude method of supplying money to elect men who will vote "right."

Big corporations or "interests" that need frequent legislative favors or desire to prevent the passage of laws compelling them to be "good" often find it cheaper to elect their own men to office than to buy other men after they are elected. This form of bribery is very insidious, and it is often hard to draw the line between a legitimate effort to elect men who favor certain policies and an attempt to control the legislature dishonestly.

Legislative blackmail consists in the introduction of a proposed law for the express purpose of extorting money as the price of *not* passing it. Its commonest form consists in the "introduction" of a proposed law requiring corporations to do something that may or may not be properly required, but that is most certainly very costly and vexatious. An agent promptly visits the corporations attacked, and promises that if such and such a sum is paid the measure will be withdrawn.

So regularly was this done in many legislatures that for years all big corporations maintained a "lobby" at most state capitals, whose duty it was to buy off just such attacks, and make sure that the bribe money was paid only to those who would "deliver the goods."

These "lobbies," naturally, did not content themselves with buying off blackmailers, but also used their money and their organization to secure special and illegal privileges and to stave off needed reforms.

Reform.—The remedy for police "graft" is simple. When the police force is managed by honest chiefs who are not dependent on the favor of the "boss" for their posts, it will cease. It will, of course, be a slow matter to purify the police and to weed out those appointed because they were willing to do the corrupt work, but it should not be so very much more difficult than the original "boss" found it to weed out the honest men. In any event, it can be done and must be done.

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It is naturally very difficult to learn the truth as to council and legislative “graft.” The public knows nothing of the secret offers to sell out. The public merely sees, for instance, that the council thinks it unwise to allow the building of a particular railway switch; or that a new gas company proposes to supply better gas; or that the legislature is considering a proposed law to make the “octopus” behave itself. All these things may really be done in good faith. Some more or less plausible arguments can be made for any proposition under the sun. The public finds it both difficult and troublesome to look very deeply into the subject. “Am I my brother’s keeper?”

Nevertheless, there has been an awakening. The country has found out, at least in a general way, what has been going on, and knowledge is as fatal to “graft” as sunlight is to consumption germs. Conditions have greatly improved in the last few years, though there is still room for vast betterment. The main thing is to elect honest men to city councils and legislatures, and not to vote for a corrupt man who happens to wear a party label.

TOPICS

Why, ultimately, is the voter responsible for “graft”?

What relation do you see between “graft” and laws on the statute-books which are either very difficult to enforce or which do not meet with the general approval of the community?

Why is it that a “boss” sometimes favors many restrictive laws?

Find out what the term “strike bill” means in the legislature.

In the ordinary course of events, does the large corporation or the officer of the government begin the corruption? If a corporation is blackmailed, what is investigation likely to show about the corporation?

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